

# OFFICIAL CODE OF GEORGIA ANNOTATED

---

## 2012 Supplement

Including Acts of the 2012 Regular Session of the General Assembly

---

*Prepared by*

The Code Revision Commission

The Office of Legislative Counsel

*and*

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

---

## Volume 16 2010 Edition

Title 18. Debtor and Creditor

Title 19. Domestic Relations

---

Including Annotations to the Georgia Reports  
and the Georgia Appeals Reports

---

**Place in Pocket of Corresponding Volume of  
Main Set**

---

LexisNexis®  
Charlottesville, Virginia

COPYRIGHT © 2011, 2012  
BY  
THE STATE OF GEORGIA

---

All rights reserved.

ISBN 978-0-327-11074-3 (set)  
ISBN 978-1-4224-6356-7

5013629

## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

**Contacting LexisNexis®:**

Visit our Website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please write or call toll free 1-800-833-9844, fax at 1-518-487-3584, or email us at [Customer.Support@lexisnexis.com](mailto:Customer.Support@lexisnexis.com). Direct written inquiries to:

LexisNexis®  
Attn: Official Code of Georgia Annotated  
701 East Water Street  
Charlottesville, Virginia 22902-5389

# **TITLE 18**

## **DEBTOR AND CREDITOR**

Chap.

4. Garnishment Proceedings, 18-4-1 through 18-4-135.

---

## **CHAPTER 2**

### **DEBTOR AND CREDITOR RELATIONS**

#### **ARTICLE 4**

##### **UNIFORM FRAUDULENT TRANSFERS**

###### **18-2-70. Short title.**

**Law reviews.** — For annual survey of law on business associations, see 62 Mercer L. Rev. 41 (2010).

#### **JUDICIAL DECISIONS**

**Motion for summary judgment denied.** — Summary judgment motion filed by an insurer in response to a Chapter 7 trustee's complaint charging that certain premiums paid to the insurer by a debtor were fraudulent conveyances that were recoverable under 11 U.S.C.S. § 548 and/or under Georgia's Uniform Fraudulent Transfers Act, O.C.G.A. § 18-2-70 et seq., was denied because case presented significant factual issues concerning the

legal relationships between debtor and the entities on behalf of which debtor had paid the premiums and the presence of such issues foreclosed summary judgment. *Coleman v. Zurich Am. Ins. Co. (In re Darrow Auto. Group, Inc.)*, No. 09-11228, 2011 Bankr. LEXIS 5253 (Bankr. S.D. Ga. Mar. 29, 2011).

**Cited** in *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634 (2011).

###### **18-2-71. Definitions.**

#### **JUDICIAL DECISIONS**

**Transfer.** — Definition of a "transfer" is broad enough to encompass a co-owner's withdrawal of funds from a joint bank account. *Bishop v. Patton*, 288 Ga. 600,

706 S.E.2d 634, overruled on other grounds by *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

## 18-2-74. Fraudulent transfer; determination of actual intent.

### JUDICIAL DECISIONS

**Badges of fraud identified by federal court applicable.** — O.C.G.A. § 18-2-74 permits the trustee to avoid a transfer made with the actual intent to hinder, delay or defraud any creditor of the debtor. Subsection (b) states that, in determining actual intent, the court could consider a specified list of factors among other factors, which track the badges of fraud identified by the United States Court of Appeals for the Eleventh Circuit. *Scarver v. M. Abuhab Participacoes S.A. (In re Moskowitz)*, No. 10-6650-WLH, 2011 Bankr. LEXIS 4800 (Bankr. N.D. Ga. Nov. 28, 2011).

#### Pleading requirements.

Chapter 7 trustee's allegations were sufficient to survive a creditor's motion to dismiss the trustee's complaint seeking to avoid and recover transfers pursuant to 11 U.S.C. §§ 544(b)(1) and 550 when the trustee alleged sufficient facts to suggest that, pursuant to O.C.G.A. § 18-2-74(b), the creditor received avoidable fraudulent transfers from the debtor. The trustee alleged that all of the transfers were made within four years of the petition date, that the transfers were from the debtors' bank account, and that several badges of fraud indicated the debtors' actual intent to hinder, delay, or defraud including the fact that the transfers occurred when the debtors were insolvent, the creditor was an insider of the debtors at the time of the transfers, and the creditor knew or should have known that the debtors were involved in an unlawful scheme to defraud investors. *Gordon v. Graybeal (In re CM Vaughn, LLC)*, No. 10-06105-MGD, 2010 Bankr. LEXIS 2547 (Bankr. N.D. Ga. June 21, 2010).

Court rejected transferees' argument that a Chapter 7 trustee could not plausibly assert the existence of a creditor with an allowed claim that gave the creditor standing under 11 U.S.C. § 544(b)(1) to assert a constructively fraudulent transfer claim under O.C.G.A. § 18-2-74 and Del. Code Ann. tit. 6, § 1304 because the assertion that only an unsecured creditor with a claim arising prior to the transfers

could seek their avoidance was legally flawed. Under the state statutes, a transfer for less than reasonably equivalent value was constructively fraudulent as to creditors whose claims arose after the transfers when the debtor was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction. *Watson v. Powell (In re Atlantis Plastics, Inc.)*, No. 10-06349, 2011 Bankr. LEXIS 1147 (Bankr. N.D. Ga. Mar. 31, 2011) (Unpublished).

#### No fraudulent transfer shown.

Chapter 7 trustee was not entitled to the recovery of property from the debtor's property under 11 U.S.C. § 544. Under the fraudulent transfer elements of O.C.G.A. § 18-2-74, the debtor received reasonably equivalent value in exchange for the privilege of living in the property without the payment of rent, taxes, or insurance and in exchange for enjoying the benefit of property improvements. *Pettigrew v. Rollins (In re Rollins)*, No. 09-6054, 2011 Bankr. LEXIS 3742 (Bankr. N.D. Ga. Sept. 29, 2011).

**Transfer before a crime was committed.** — Although the transfer of a house was accompanied by some badges of fraud, the trial court abused the court's discretion in enjoining further disposition of the house, pending adjudication of the merits of wrongful death and fraudulent transfer claims, since the transferor gave the house to the transferor's three minor grandchildren in Florida three months before the transferor murdered the decedent. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

**Fraudulent transfer by individual accused of murder.** — Court did not abuse the court's discretion in entering an interlocutory injunction barring further disposition of the proceeds from joint bank accounts pending final disposition of fraudulent transfer and wrongful death

lawsuits because badges of fraud indicated an actual intent to hinder, delay, or defraud a decedent's estate and heirs of a full recovery. The transferor's adult child came up from Florida to withdraw the funds from joint bank accounts in Georgia three days after the transferor was arrested for the murder of the decedent. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by SRB Inv. Servs., LLLP v. Branch Banking & Trust Co., 289 Ga. 1, 709 S.E.2d 267 (2011).

**Motion to dismiss denied.** — Court could not say that a potential contract claim would be impermissibly intertwined with plaintiffs' Uniform Fraudulent Transfer Act (UFTA) claim. Although plaintiffs were ultimately seeking to enforce rights granted by the indenture, their UFTA claim depended on facts and circumstances outside of any contractual rights or obligations provided by the indenture. *Akanthos Capital Mgmt., LLC v. CompuCredit Holdings Corp.*, No. 1:10-cv-844-TCB, 2011 U.S. Dist. LEXIS 28568 (N.D. Ga. Mar. 15, 2011).

**Discovery of attorney-client communications.** — Judgment creditor could inquire into attorney-client communications only as the communications were related to the planning or execution of the transition from the limited liability company (LLC) to the other entities. The creditor could not inquire into communications made after these transactions were carried out, even if those communications concern the possible legal implications of the transactions. *Tindall v. H & S Homes, LLC*, No. 5:10-cv-044(CAR), 2011 U.S. Dist. LEXIS 2299 (M.D. Ga. Jan. 10, 2011).

**Interlocutory injunction proper.** — Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers because the debtors presented no evidence of harm from the creditor's delay in amending the creditor's complaint to seek an interlocutory injunction, and the delay resulted primarily from the debtors' concealment of the debtors' ac-

tions and obstruction of the creditor's efforts to discover the details; vague assertions of harm supported by no citation to evidence in the record are insufficient to sustain a defense of laches, and there is a balance between a plaintiff's knowing that a cause of action exists and that interim injunctive relief may be needed and sitting on the plaintiff's rights to the prejudice of the defendant. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers in violation of the Georgia Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., because foreclosing on collateral of uncertain remaining value, going through confirmation proceedings, and suing the insolvent debtors to reclaim the deficiency and then having to recover the fraudulently transferred assets to collect on the ensuing judgment was not an adequate remedy at law since it was not nearly as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity enjoining further transfers temporarily so that the creditor could collect a final judgment; when a money judgment is likely to be uncollectible because a debtor has fraudulently moved the debtor's assets in an attempt to dissipate or conceal the assets from a creditor, Georgia law, both before and under the Georgia UFTA, gives the creditor the right to seek interlocutory relief by freezing the assets where the assets are. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers in violation of the Georgia Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., because at least seven statutory badges of fraud listed in the UFTA, O.C.G.A. § 18-2-74(b),

were implicated, and the creditor also presented evidence as a non-statutory badge of fraud of the debtors' pattern of maintaining just enough funds in certain accounts to satisfy the debtors' financial covenants at the end of each quarter and then transferring the funds away shortly thereafter; under the UFTA, O.C.G.A. § 18-22-77(a)(3)(A), the trial court was authorized to enter an interlocutory injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property. SRB Inv. Servs., LLLP v. Branch Banking & Trust Co., 289 Ga. 1, 709 S.E.2d 267 (2011).

**Summary judgment improper.**

Bankruptcy court denied a Chapter 7 trustee's motion for summary judgment on the trustee's claim that transfers that were made by a mortgage company to an investor were avoidable under 11 U.S.C. § 544 and the Georgia Uniform Fraudulent Transfer Act, O.C.G.A. § 18-2-74 et seq., because a person who owned the company used the company to operate a Ponzi scheme. The trustee had the burden of showing that there was no genuine issue of material fact, and there was a

genuine dispute regarding whether the investor took the transfers in good faith, or gave reasonably equivalent value in exchange for the transfers; although a significant portion of the uncertainty in the evidence arose from the fact that the investor refused to respond to the trustee's requests for discovery, the trustee had done nothing more than highlight the investor's use of U.S. Const., amend. V. Kerr v. Hart (In re Christou), No. 08-6420, 2010 Bankr. LEXIS 3432 (Bankr. N.D. Ga. Sept. 23, 2010).

O.C.G.A. § 18-2-74, allows the avoidance of a transfer made without receiving reasonably equivalent value when the debtor was either engaged or about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or the debtor intended to incur or believed or reasonably should have believed that he or she would incur debts beyond his or her ability to pay as the debts became due. Scarver v. M. Abuhab Participacoes S.A. (In re Moskowitz), No. 10-6650-WLH, 2011 Bankr. LEXIS 4800 (Bankr. N.D. Ga. Nov. 28, 2011).

**18-2-75. Transfer or obligation fraudulent if incurred without receiving reasonably equivalent value.**

**JUDICIAL DECISIONS**

**Dispute over law firm's fees payable by debtor.** — In a complaint seeking to recover pre-petition transfers made by a Chapter 11 debtor to a law firm, the law firm's motion for summary judgment was denied as there was a genuine dispute of material fact regarding whether the debtor failed to receive reasonably equivalent value for the transfers as required by either 11 U.S.C. § 548(a)(1)(B)(I) or O.C.G.A. § 18-2-75(a). The law firm contended that the firm's invoices demonstrated that the firm provided substantial legal services to the debtor in exchange for the payments the firm received, while the debtor's responsible officer contended that the descriptions of work in the invoices were too vague and cursory to evaluate

whether the services constituted reasonably equivalent value. Davis v. McDermott Will & Emery LLP (In re Tom's Foods, Inc.), No. 07-4012, 2010 Bankr. LEXIS 3720 (Bankr. M.D. Ga. Oct. 20, 2010).

**Obligation and payments thereon evaluated separately.** — In a fraudulent conveyance action, the need to evaluate a debt separately from the payments thereon was evidenced by 11 U.S.C. § 548 and O.C.G.A. § 18-2-75(a), which permitted the obligation and the payments to be avoided separately or together. Watts v. Peachtree Tech. Partners, LLC (In re Palisades at West Paces Imaging Ctr., LLC), No. 11-5183, 2011 Bankr. LEXIS 3576 (Bankr. N.D. Ga. Sept. 13, 2011).

## 18-2-77. Relief for creditor against fraudulent transfer or obligation.

### JUDICIAL DECISIONS

**Transfer prior to death.** — Although the transfer of a house was accompanied by some badges of fraud, the trial court abused the court's discretion in enjoining further disposition of the house, pending adjudication of the merits of wrongful death and fraudulent transfer claims since the transferor gave the house to the transferor's three minor grandchildren in Florida three months before the transferor murdered the decedent. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

**Interlocutory injunction proper.** — Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleg-

ing breach of contract and fraudulent transfers in violation of the Georgia Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., because at least seven statutory badges of fraud listed in the UFTA, O.C.G.A. § 18-2-74(b), were implicated, and the creditor also presented evidence as a non-statutory badge of fraud of the debtors' pattern of maintaining just enough funds in certain accounts to satisfy the debtors' financial covenants at the end of each quarter and then transferring the funds away shortly thereafter; under the UFTA, O.C.G.A. § 18-22-77(a)(3)(A), the trial court was authorized to enter an interlocutory injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

## 18-2-78. Conditions for voidability of transfer or obligation; judgment.

### JUDICIAL DECISIONS

**Summary judgment improper.** — Creditor failed to show good faith under O.C.G.A. § 18-2-78 in receiving fraudulent transfers from a bankruptcy debtor as returns on the creditor's investments in the debtor's Ponzi scheme, and thus the creditor was not entitled to summary judgment; the creditor was an educated and sophisticated businessman and, despite the creditor's assertion that the creditor had no reason to doubt the debtor who

previously brokered mortgages for the creditor, the facts that the creditor invested substantial funds, received no promissory notes, and was paid no interest were sufficient to indicate that the creditor should have been suspicious of the nature of the transactions. *In re Christou v. Cressaty Metals, Inc.*, No. 08-6402, 2010 Bankr. LEXIS 3430 (Bankr. N.D. Ga. Sept. 23, 2010).

## 18-2-79. Time for commencement of action.

### JUDICIAL DECISIONS

#### Limitations on actions.

Chapter 7 trustee was not barred by the statute of limitations under O.C.G.A. § 18-2-79 or under 11 U.S.C. § 546 from pursuing a cause of action under 11 U.S.C.

§ 544 because the debtor filed the debtor's petition before the state statute of limitations expired, but was barred from pursuing avoidance under 11 U.S.C. § 548 of any transfer occurring prior to two years

before the petition was filed. *Watts v. Peachtree Tech. Partners, LLC (In re Palisades at West Paces Imaging Ctr., LLC)*, No. 11-5183, 2011 Bankr. LEXIS 3576 (Bankr. N.D. Ga. Sept. 13, 2011).

**Cited** in *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634 (2011).

## 18-2-80. Principles of law and equity remain applicable; application of state and federal law.

### JUDICIAL DECISIONS

**Cited** in *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634 (2011).

## CHAPTER 4

### GARNISHMENT PROCEEDINGS

#### Article 1

##### General Provisions

Sec.	18-4-1.	Definitions; practice and procedure generally.	Sec.	18-4-62.	Contents and service of summons of garnishment; requirements as to filing of answer to summons.
	18-4-3.	Amendment of affidavits, bonds, garnishee answer, or pleadings.		18-4-66.	Forms for postjudgment garnishment.
	18-4-8.	Definitions; entity as garnishee; execution and filing by certain officers or employees of an entity.			

#### Article 2

##### Property and Persons Subject to Garnishment

18-4-20.	Property subject to garnishment generally; claim amount and defendant's social security number on summons; information to be contained on summons of garnishment upon financial institution.	18-4-80.	Effect of release of summons of garnishment on garnishee.
18-4-21.	Garnishment of salaries of officials and employees of state and its subdivisions; exemption; summons.	18-4-81.	Effect of defendant's traverse on garnishee; filing of bond by defendant; entry of judgment on bond.
18-4-23.	Service of summons of garnishment controlled by Civil Practice Act.	18-4-82.	Contents of garnishee answer.

#### Article 4

##### Postjudgment Garnishment Proceedings Generally

Sec.	18-4-62.	Contents and service of summons of garnishment; requirements as to filing of answer to summons.
	18-4-66.	Forms for postjudgment garnishment.

#### Article 5

##### Answer by Garnishee and Subsequent Proceedings

18-4-80.	Effect of release of summons of garnishment on garnishee.
18-4-81.	Effect of defendant's traverse on garnishee; filing of bond by defendant; entry of judgment on bond.
18-4-82.	Contents of garnishee answer.
18-4-83.	Service of answer of garnishee on plaintiff or attorney.
18-4-84.	Delivery to court of property admitted to be subject to garnishment; property in safety deposit box.
18-4-85.	Traverse of answer of garnishee by plaintiff — Time period; discharge for failure to traverse.

Sec.	Sec.
18-4-90. Entry of default judgment upon failure of garnishee to file garnishee answer to summons; opening of default.	and contents of garnishee answers.
18-4-91. Relief of garnishee from default judgment.	18-4-114. Traverse of garnishee answer by plaintiff.
18-4-92. Effect of garnishee's failure to respond properly to summons of garnishment.	18-4-115. Entry of default judgment against garnishee; relief from default judgment.
18-4-92.1. Relief of garnishee from liability; definitions.	18-4-116. Effect of and proceedings upon filing of traverse by defendant.
18-4-97. Right of garnishee to actual reasonable expenses in making true garnishee answer of garnishment; procedure for collection; reimbursement.	18-4-117. Effect of termination of employment relationship between garnishee and defendant.
	18-4-118. Forms for continuing garnishment.

### Article 6

#### Continuing Garnishment Proceedings

18-4-110. Right of plaintiff who has obtained money judgment to process of continuing garnishment; methods, practices, and procedures for continuing garnishment generally.

18-4-112. Filing and contents of affidavit for continuing garnishment; issuance of summons; notice and service of summons.

18-4-113. Contents of summons of continuing garnishment; filing

### Article 7

#### Continuing Garnishment for Support

18-4-133. Service of summons; requirements as to filing of first garnishee answer accompanied by money; application of money.

18-4-134. Filing further garnishee answers and tendering money; application of money; filing of final garnishee answer by garnishee upon termination of defendant's employment.

18-4-135. Period of attachment of writ of garnishment; garnishee's reliance upon information in affidavit of garnishment.

## ARTICLE 1

### GENERAL PROVISIONS

#### 18-4-1. Definitions; practice and procedure generally.

(a) As used in this chapter, the terms "garnishee answer," "garnishee's answer," or "answer of garnishee" means the response filed by a garnishee responding to a summons of garnishment detailing the property, money, or other effects of the defendant that are in the possession of the garnishee or declaring that the garnishee holds no such property, money, or other effects of the defendant.

(b) The procedure in garnishment cases shall be uniform in all courts throughout this state; and, except as otherwise provided in this chapter, Chapter 11 of Title 9 shall apply in garnishment proceedings. (Code 1933, § 46-305, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1982, p. 3, § 18; Ga. L. 2012, p. 2, § 1/HB 683.)

**The 2012 amendment**, effective February 7, 2012, added subsection (a); and designated the existing provisions as subsection (b).

### **18-4-3. Amendment of affidavits, bonds, garnishee answer, or pleadings.**

Unless otherwise provided in this chapter, any affidavit, bond, garnishee answer, or pleading required or permitted by this chapter shall be amendable at any time before judgment thereon. (Code 1933, § 46-602, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 2/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted “garnishee answer,” in this Code section.

### **18-4-8. Definitions; entity as garnishee; execution and filing by certain officers or employees of an entity.**

(a) As used in this Code section, the term:

(1) “Entity” means a public corporation or a corporation, limited liability company, partnership, limited partnership, professional corporation, firm, or other business entity other than a natural person.

(2) “Public corporation” means the State of Georgia or any department, agency, branch of government, or State of Georgia political subdivision, as such term is defined in Code Section 50-15-1, or any public board, bureau, commission, or authority created by the General Assembly.

(b) When a garnishment proceeding is filed in a court under any provision of this chapter involving an entity as garnishee, the execution and filing of a garnishee answer may be done by an entity’s authorized officer or employee and shall not constitute the practice of law. If a traverse or claim is filed to such entity’s garnishee answer in a court of record, an attorney shall be required to represent such entity in further garnishment proceedings.

(c) An entity’s payment into court of any property, money, or other effects of the defendant, or property or money which is admitted to be subject to garnishment, may be done by an entity’s authorized officer or employee and shall not constitute the practice of law. (Code 1981, § 18-4-8, enacted by Ga. L. 2012, p. 2, § 3/HB 683.)

**Effective date.** — This Code section became effective February 7, 2012.

## ARTICLE 2

## PROPERTY AND PERSONS SUBJECT TO GARNISHMENT

**18-4-20. Property subject to garnishment generally; claim amount and defendant's social security number on summons; information to be contained on summons of garnishment upon financial institution.**

(a) As used in this Code section, the term:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of the amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) All debts owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all debts accruing from the garnishee to the defendant from the date of service to the date of the garnishee's answer shall be subject to process of garnishment; and no payment made by the garnishee to the defendant or to his order, or by any arrangement between the defendant and the garnishee, after the date of the service of the summons of garnishment upon the garnishee, shall defeat the lien of such garnishment.

(c) All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee or coming into the possession or control of the garnishee at any time from the date of service of the summons of garnishment upon the garnishee to the date of the garnishee's answer shall be subject to process of garnishment except, in the case of collateral securities in the hands of a creditor, such securities shall not be subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.

(d)(1) Notwithstanding subsection (a) of this Code section, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed the lesser of:

(A) Twenty-five percent of his disposable earnings for that week; or

(B) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by

Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, Section 206(a)(1), in effect at the time the earnings are payable.

(2) In case of earnings for a period other than a week, a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subparagraph (B) of paragraph (1) of this subsection shall be used.

(e) The limitation on garnishment set forth in subsection (d) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant unless the garnishee has received a summons of garnishment based on a judgment for alimony or the support of a dependent, in which case the limitation on garnishment set forth in subsection (f) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant. No garnishee shall withhold from the disposable earnings of the defendant any sum greater than the amount prescribed by subsection (d) or subsection (f) of this Code section, as applicable, regardless of the number of summonses served upon the garnishee.

(f) The exemption provided by subsection (d) of this Code section shall not apply if the judgment upon which the garnishment is based is a judgment for alimony or for the support of any dependent of the defendant, provided the summons of garnishment shall contain a notice to the garnishee that the garnishment is based on the judgment for alimony or the support of a dependent. In any case in which the garnishment is based on the judgment, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall be 50 percent of the individual's disposable earnings for that week.

(g) Except as provided in Article 7 of this chapter for a summons of continuing garnishment for support, the summons of garnishment, including a summons of continuing garnishment pursuant to Article 6 of this chapter, shall on its face state the total amount claimed to be due at the time of the summons and the amount subject to garnishment shall not exceed the amount so shown on the summons of garnishment.

(h) The summons of garnishment, including a summons of continuing garnishment, may on its face set forth, if known, the social security number of the defendant.

(i) A summons of garnishment upon a financial institution, or an attachment thereto, shall state with particularity all of the following information, to the extent reasonably available to the plaintiff:

(1) The name of the defendant, and, to the extent such would reasonably enable the garnishee to properly respond to the summons,

all known configurations, nicknames, aliases, former or maiden names, trade names, or variations thereof;

(2) The service address and the current addresses of the defendant and, to the extent such would reasonably enable the garnishee to properly respond to the summons of garnishment and such is reasonably available to the plaintiff, the past addresses of the defendant;

(3) The social security number or federal tax identification number of the defendant; and

(4) Account, identification, or tracking numbers known or suspected by the plaintiff to be used by the garnishee in the identification or administration of the defendant's funds or property.

A misspelling of any information required by paragraph (1) or (2) of this subsection, other than the surname of a natural person defendant, shall not invalidate a summons of garnishment, so long as such information is not misleading in a search of the garnishee's records. (Code 1933, § 46-301, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1977, p. 159, § 3; Ga. L. 1980, p. 1769, §§ 2-4; Ga. L. 1984, p. 370, § 1; Ga. L. 1985, p. 149, § 18; Ga. L. 1985, p. 785, § 1; Ga. L. 1985, p. 1632, § 1; Ga. L. 1997, p. 941, § 1; Ga. L. 2012, p. 2, § 4/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in subsection (i), substituted “garnishee to properly respond to” for “garnishee to answer properly” in paragraphs (i)(1) and (i)(2).

#### **18-4-21. Garnishment of salaries of officials and employees of state and its subdivisions; exemption; summons.**

(a) Money due officials or employees of a municipal corporation or county of this state or of the state government, or any department or institution thereof, as salary for services performed for or on behalf of the municipal corporation or county of this state, or the state, or any department or institution thereof, shall be subject to garnishment, except in no event may the officials' or employees' salary for services performed for or on behalf of any municipal corporation or county of this state, or the state, or any department or institution thereof, be garnisheed where the judgment serving as a basis for the issuance of the summons of garnishment arises out of the liability incurred in the scope of the officials' or employees' governmental employment while responding to an emergency. In such cases, the summons shall be directed to such political entity and served upon the person authorized by law to draw the warrant on the treasury of the government or to issue a check for such salary due, or upon the chief administrative officer of the political subdivision, department, agency, or instrumen-

tality; and such entity shall be required to respond to the summons in accordance with the mandate thereof and as provided by this chapter.

(b) For purposes of this Code section only, the state and its political subdivisions, departments, agencies, and instrumentalities shall be deemed private persons; and jurisdiction for the purpose of issuing a summons of garnishment shall be restricted to a court located in the county in which the warrant is drawn on the treasury of the government or in which the check is issued for the salary due the official or employee of the state or its political subdivisions, departments, agencies, or instrumentalities. (Code 1933, § 46-306, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1977, p. 634, § 1; Ga. L. 1980, p. 1769, § 6; Ga. L. 2012, p. 2, § 5/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted “shall be required to respond to” for “is required to answer” in the last sentence of subsection (a).

#### **18-4-23. Service of summons of garnishment controlled by Civil Practice Act.**

The method of service of a summons of garnishment shall be as provided in Code Section 9-11-4. (Code 1933, § 46-304, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1984, p. 1319, § 2; Ga. L. 2012, p. 2, § 6/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted the present provisions of this Code section for the former provisions, which read: “Service of a summons of garnishment shall be made by serving the agent in charge of the office or other place of business where the de-

fendant is employed. In the event that such service cannot be made, then service of a summons of garnishment upon the agent in charge of either the registered office or the principal place of business of a corporation shall be sufficient.”

### **ARTICLE 4**

#### **POSTJUDGMENT GARNISHMENT PROCEEDINGS GENERALLY**

#### **18-4-62. Contents and service of summons of garnishment; requirements as to filing of answer to summons.**

(a) The summons of garnishment shall be directed to the garnishee, commanding the garnishee to respond stating what money or other property is subject to garnishment. Except as provided in subsection (b) or (c) of this Code section, the garnishee’s answer shall be filed with the court issuing the summons not sooner than 30 days and not later than 45 days after the service of the summons and shall be accompanied by the money or other property subject to garnishment. Upon the affidavit and summons being delivered to the sheriff, marshal, constable, or like

officer of the court issuing the summons, it shall be his or her duty to serve the summons of garnishment, as set forth in Code Section 18-4-23, upon the person to whom it is directed and to make an entry of service upon the affidavit and return the affidavit to the court. The summons of garnishment shall state that if the garnishee fails to file a garnishee's answer to the summons, a judgment by default will be entered against the garnishee for the amount claimed by plaintiff against the defendant.

(b) Under circumstances where the defendant has been an employee of the garnishee, and if the defendant is no longer employed by the garnishee, and if the garnishee has no money or property of the defendant subject to garnishment, the garnishee may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after the service of the summons.

(c) If the garnishee is a bank or other financial institution and if the defendant does not have an active account with, and is not the owner of any money or property in the possession of, the bank or financial institution, then the garnishee may immediately file a garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after the service of the summons. (Code 1933, § 46-103, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1983, p. 454, § 1; Ga. L. 2012, p. 2, § 7/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in subsection (a), in the first sentence, substituted "the garnishee to respond" for "him to file an answer", in the second sentence, substituted "the garnishee's answer shall" for "the answer must", and substituted "shall be" for "must be", in the third sentence, inserted "or her", inserted ", as set forth in Code Section 18-4-23," and substituted "an entry" for "his entry", in the fourth sentence, deleted a comma following "that", inserted "file a garnishee's", and inserted "to"; in subsection (b), substituted "file the garnishee's

answer; provided, however, that such garnishee's" for "file an answer; however, such"; and, in subsection (c), substituted "file a garnishee's answer; provided, however, that such garnishee's" for "file an answer; however, such".

**Law reviews.** — For article discussing an advisory opinion issued by the Standing Committee on the Unlicensed Practice of Law on the issue of execution and filing of an answer in the garnishment action by a nonattorney employee of the garnishee, see 16 (No. 1) Ga. St. B.J. 102 (2010).

#### **18-4-64. Service of copy of summons of garnishment upon defendant; notice of filing and issuance of summons of garnishment; time for distribution.**

##### **JUDICIAL DECISIONS**

**Substantial compliance with three-day notice period was insufficient.** — Court of Appeals erred when the

court held that a judgment creditor's notification of a judgment debtor of a garnishment eight business days after ser-

vice of the garnishee substantially complied with O.C.G.A. § 18-4-64(a)(7)'s requirement that notice be given within three business days. O.C.G.A. § 1-3-1 did

not apply because the statute was unambiguous. *Cook v. NC Two, L.P.*, 289 Ga. 462, 712 S.E.2d 831 (2011).

### 18-4-65. Issues defendant may raise by traverse of plaintiff's affidavit.

#### JUDICIAL DECISIONS

##### Traverse properly granted as to garnishment petition.

Trial court did not err in granting a sole proprietorship's traverse, in which it sought to become a party in a golf supplier's garnishment action and asserted a verified claim to the funds at issue, because there was some evidence to support the findings that the sole proprietorship was a separate and distinct entity from the corporation and that the garnishee assented to the modification of a contract

to replace the corporation with the sole proprietorship as contractor; the sole proprietorship had its own tax identification number and liability insurance, and a representative of the garnishee testified that the garnishee was aware that someone had changed the contractor's name and that the garnishee had no business dealings with the corporation. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

### 18-4-66. Forms for postjudgment garnishment.

For the purpose of Articles 1 through 5 of this chapter, the following forms are declared to be sufficient for garnishment after judgment, provided that nothing in this Code section shall be construed to require the use of particular forms in any proceeding under this article:

#### (1) Garnishment affidavit.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
Defendant	)	
	)	
	)	
Garnishee	)	
	)	
	)	
Address	)	

## GARNISHMENT AFFIDAVIT

Personally appeared the undersigned affiant who on oath says that he is the above plaintiff, his agent, or his attorney at law and that the above defendant is indebted to said plaintiff on a judgment described as follows:

\_\_\_\_\_ is the case number in the \_\_\_\_\_ Court of \_\_\_\_\_ County which rendered the judgment against the defendant, \$\_\_\_\_\_ being the balance thereon.

\_\_\_\_\_  
Affiant

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Plaintiff's attorney

(2) Summons of garnishment.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
Defendant	)	
Social security	)	
number	)	
	)	
Garnishee	)	
	)	
Address	)	

## SUMMONS OF GARNISHMENT

To: \_\_\_\_\_ Garnishee

Amount claimed due by plaintiff \$\_\_\_\_\_  
(To be completed by plaintiff)

Plus court costs due on the summons \$\_\_\_\_\_  
(To be completed by the clerk)

YOU ARE HEREBY COMMANDED to hold immediately all property, money, wages, except what is exempt, belonging to the defen-

dant, or debts owed to the defendant named above at the time of service of this summons and between the time of service of this summons and the time of making your garnishee answer. Not sooner than 30 days but not later than 45 days after you are served with this summons, you are commanded to file your garnishee answer in writing with the clerk of this court and serve a copy upon the plaintiff or the plaintiff's attorney named below. Money or other property subject to this summons should be delivered to the court with your garnishee answer. Should you fail to file a garnishee answer to this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant.

Witness the Honorable \_\_\_\_\_, Judge of said Court.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Clerk,

\_\_\_\_\_  
Court of \_\_\_\_\_ County

\_\_\_\_\_  
Plaintiff's attorney

\_\_\_\_\_  
Address

Service perfected on garnishee, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Deputy marshal, sheriff,  
or constable

(3) Defendant's traverse and order thereon.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

_____ Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
_____ Defendant	)	
	)	
_____ Garnishee	)	

#### TRAVERSE OF DEFENDANT

Now comes the defendant in the above-styled case and traverses the plaintiff's affidavit by saying the same is untrue or legally

insufficient.

Defendant or his  
attorney at law

ORDER

It is hereby ordered that a hearing be held upon the defendant's traverse before this court on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, at \_\_\_\_:\_\_\_\_.M., and that a copy of the defendant's traverse and this order be served as provided by law.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Judge,  
\_\_\_\_ Court of \_\_\_\_\_ County

(CERTIFICATE OF SERVICE)

(4) Answer of garnishee.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

_____ Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
_____ Defendant	)	
	)	
_____ Garnishee	)	

ANSWER OF GARNISHEE

1.

At the time of service or from the time of service to the time of this garnishee answer, garnishee had in its possession the following described property of the defendant:

---

---

2.

At the time of service or from the time of service to the time of this garnishee answer, all debt accruing from garnishee to defendant is in the amount of \$\_\_\_\_\_.

## 3.

\$\_\_\_\_ of the amount named in paragraph 2 was wages earned at the rate of \$\_\_\_\_ per \_\_\_\_ for the period beginning (date), \_\_\_\_, through the time of making this garnishee answer. The amount of wages which is subject to this garnishment is computed as follows:

\$ \_\_\_\_ Gross earnings

\$ \_\_\_\_ Total social security and withholding tax

\$ \_\_\_\_ Total disposable earnings

\$ \_\_\_\_ Amount of wages subject to garnishment

## 4.

Garnishee further states: \_\_\_\_\_.

Garnishee,

garnishee's attorney, or officer  
or employee of an entity garnishee

## (CERTIFICATE OF SERVICE)

(5) Plaintiff's traverse.

IN THE \_\_\_\_ COURT OF \_\_\_\_ COUNTY

STATE OF GEORGIA

Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
Defendant	)	
	)	
	)	
Garnishee	)	

## TRAVERSE OF PLAINTIFF

Now comes the plaintiff in the above-styled case and traverses the garnishee's answer by saying the same is untrue or legally insufficient.

Plaintiff or his  
attorney at law

## (CERTIFICATE OF SERVICE)

(6) Release of garnishment.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	-File no. _____
Defendant	)	
	)	
	)	
Garnishee	)	
	)	
	)	
Address	)	

## RELEASE OF GARNISHMENT

To: \_\_\_\_\_ Garnishee

This is to notify you that you have been released from filing a garnishee answer to any and all summons of garnishment pending as of this date in the above-styled case.

This release authorizes you to deliver to the defendant in garnishment any money or other property in your possession belonging to the defendant.

This release does not terminate the garnishment proceedings, nor does this release relieve you of any obligation placed on you by the service of a summons of garnishment subsequent to this date.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

Clerk,

\_\_\_\_\_ Court of \_\_\_\_\_ County

(7) Attachment to summons of garnishment upon a financial institution.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
_____	)	

Defendant )  
\_\_\_\_\_  
Other known names )  
of Defendant )  
\_\_\_\_\_  
Current and past )  
addresses of Defendant )  
\_\_\_\_\_  
Social security number )  
or federal tax )  
identification number )  
of Defendant )  
\_\_\_\_\_  
Account or identification )  
numbers of Defendant )  
used by Garnishee )  
\_\_\_\_\_  
Other allegations )  
\_\_\_\_\_  
Garnishee )

(Code 1933, § 46-605, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1984, p. 370, § 2; Ga. L. 1985, p. 1632, § 2; Ga. L. 1997, p. 941, § 2; Ga. L. 1999, p. 81, § 18; Ga. L. 2012, p. 2, § 8/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted “garnishee” throughout paragraphs (2), (4), and (6); in paragraph (2), in the undesignated text in the second sentence, substituted “the plaintiff’s attorney” for “his attorney”, and substituted “fail to file a garnishee answer to” for “fail to answer” in the third sentence; in paragraph (4), in section 1 of the

answer, substituted "its possession" for "his possession" and, near the end of the form, substituted "Garnishee, garnishee's attorney, or officer or employee of an entity garnishee" for "Garnishee or his attorney at law"; in paragraph (6), in the undesignated text in the form, in the first sentence, substituted "a garnishee answer" for "an answer" near the middle.

## ARTICLE 5

## ANSWER BY GARNISHEE AND SUBSEQUENT PROCEEDINGS

**18-4-80. Effect of release of summons of garnishment on garnishee.**

A release of summons of garnishment shall relieve the garnishee from any obligation to file a garnishee answer to any summons of garnishment pending on the date of the release and shall authorize the

garnishee to deliver to the defendant in garnishment any money or other property in the garnishee's possession belonging to the defendant. A release shall not operate as a dismissal of the garnishment proceedings. (Code 1933, § 46-308, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted "a garnishee answer" for "an answer" in the first sentence of this Code section.

#### **18-4-81. Effect of defendant's traverse on garnishee; filing of bond by defendant; entry of judgment on bond.**

When the defendant files his or her traverse, the garnishee is not relieved of filing a garnishee answer, nor is the garnishee relieved of delivering the money or other property of the defendant which is subject to the garnishment to the court, unless the defendant files in the clerk's office of the court where the garnishment is pending a bond with good security, in favor of the plaintiff, conditioned for the payment of any judgment that may be entered in the proceeding. The bond shall be subject to approval by the clerk of the court; and, upon receipt of a bond deemed acceptable by the clerk, it shall be the clerk's duty to issue a release of any summons of garnishment pending in the garnishment proceeding. If the plaintiff shall prevail in the proceeding, the plaintiff shall be entitled to entry of judgment upon such bond against the principal and securities therein, as judgment may be entered against securities upon appeal. If the defendant files a bond, no further garnishment process may be filed in any court by the plaintiff against the defendant until the issues raised by the defendant's pleadings are decided. (Code 1933, § 46-402, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in the first sentence, inserted "or her" and substituted "a garnishee answer" for "an answer"; substituted "the clerk's duty" for "his

duty" in the second sentence; substituted "the plaintiff shall" for "he shall" in the third sentence; and substituted "If the" for "Where the" in the fourth sentence.

#### **18-4-82. Contents of garnishee answer.**

Within the time prescribed by Code Section 18-4-62, the garnishee shall file a garnishee answer describing what money or other property is subject to garnishment under Code Section 18-4-20. If the garnishee owes the defendant any sum for wages, the garnishee answer shall also state specifically when the wages were earned by defendant and whether they were earned as daily, weekly, or monthly wages. If the garnishee has been served with summons in more than one garnishment case involving the same defendant, the garnishee shall state in each garnishee answer that the money or other property is being

delivered to the court subject to the claims of all the cases and shall give the numbers of all such cases in each garnishee answer. If the garnishee is unable to respond as provided for in this Code section, the garnishee's inability shall appear in the garnishee's answer, together with all the facts plainly, fully, and distinctly set forth, so as to enable the court to give judgment thereon. (Code 1933, § 46-501, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted "garnishee answer" for "answer" three times in this Code section; substituted "a garnishee answer" for "his answer" in the first sen-

tence; and, in the last sentence, substituted "garnishee is unable to respond" for "garnishee shall be unable to answer" at the beginning and substituted "the garnishee's" for "his" twice.

#### **18-4-83. Service of answer of garnishee on plaintiff or attorney.**

All garnishee answers shall, concurrently with filing, be served upon the plaintiff or the plaintiff's attorney. Service may be shown by the written acknowledgment of the plaintiff or the plaintiff's attorney, or by the certificate of the garnishee or the garnishee's attorney, attached to the garnishee's answer, that a copy of the garnishee's answer was mailed to the plaintiff or the plaintiff's attorney; provided, however, that no service shall be required unless the name and address of the plaintiff or the plaintiff's attorney shall appear on the face of the summons of garnishment; provided, further, that, if the garnishee fails to serve the plaintiff, the plaintiff shall be allowed 15 days from the time the plaintiff receives actual notice of the garnishee's answer to traverse the same. (Code 1933, § 46-502, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted "All garnishee answers shall" for "All answers by the garnishee shall" at the beginning; substituted "plaintiff or the plaintiff's attorney" for "plaintiff or his attorney" four times

throughout the Code section; and, in the second sentence, substituted "garnishee or the garnishee's attorney" for "garnishee or his attorney", substituted "the garnishee's answer" for "the answer" twice, and inserted "that" near the middle.

#### **18-4-84. Delivery to court of property admitted to be subject to garnishment; property in safety deposit box.**

Along with the garnishee's answer, the garnishee shall deliver to the court the money or other property admitted in the garnishee's answer to be subject to garnishment. If in responding to the summons of garnishment, as provided in Code Section 18-4-82, the garnishee shall state that the property of the defendant includes property in a safe-deposit box or similar property, the garnishee shall respond to the court issuing the summons of garnishment as to the existence of such safe-deposit box and shall hold any contents of such safe-deposit box until the earlier of:

(1) Further order of said court either releasing the garnishment or specifically requiring the garnishee to open such safe-deposit box and deliver any contents thereof to said court upon conditions prescribed by said court; or

(2) The elapsing of 120 days from the date of filing of the garnishee answer to the summons of garnishment unless such time has been extended by the court. (Code 1933, § 46-503, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1997, p. 941, § 3; Ga. L. 2012, p. 2, § 9/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in the introductory paragraph, in the first sentence, twice inserted “garnishee’s”, and, in the second sentence,

substituted “responding to” for “answering” and substituted “respond” for “answer”; and inserted “garnishee” in paragraph (2).

#### **18-4-85. Traverse of answer of garnishee by plaintiff — Time period; discharge for failure to traverse.**

If the garnishee’s answer is served on the plaintiff as provided for in Code Section 18-4-83, the plaintiff or claimant shall traverse the garnishee’s answer within 15 days after it is served, or the garnishee shall be automatically discharged from further liability with respect to the summons so answered. (Code 1933, § 46-504, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted the present provisions of this Code section for the former provisions, which read: “If the garnishee serves his answer on the plaintiff as provided for in Code Section 18-4-83,

the plaintiff or claimant must traverse the answer within 15 days after it is served or the garnishee is automatically discharged from further liability with respect to the summons so answered.”

#### **18-4-90. Entry of default judgment upon failure of garnishee to file garnishee answer to summons; opening of default.**

In case the garnishee fails or refuses to file a garnishee answer by the forty-fifth day after service of the summons, the garnishee shall automatically be in default. The default may be opened as a matter of right by the filing of a garnishee answer within 15 days of the day of default and payment of costs. If the case is still in default after the expiration of the period of 15 days, judgment by default may be entered at any time thereafter against the garnishee for the amount claimed to be due on the judgment obtained against the defendant. (Code 1933, § 46-508, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 10/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted “a garnishee

answer” for “an answer” in the first and second sentences.

**18-4-91. Relief of garnishee from default judgment.**

When a judgment is rendered against a garnishee under Code Section 18-4-90, on a motion filed not later than 60 days from the date the garnishee receives actual notice of the entry of the judgment against the garnishee, the garnishee may, upon payment of all accrued costs of court, have the judgment modified so that the amount of the judgment shall be reduced to an amount equal to the greater of \$50.00 or \$50.00 plus 100 percent of the amount by which the garnishee was indebted to the defendant from the time of service of the summons of garnishment through and including the last day on which a timely garnishee answer could have been made for all money, other property, or effects belonging to the defendant which came into the garnishee's hands from the time of service of the summons through and including the last day on which a timely answer could have been made and, in the case of garnishment of wages, less any exemption allowed the defendant by law. Notice to the garnishee by certified mail or statutory overnight delivery shall be sufficient notice as required in this Code section. On the trial of the motion, the burden of proof shall be upon any plaintiff who objects to the timeliness of the motion to establish that the motion was not filed within the time provided for by this Code section. (Code 1933, § 46-509, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1977, p. 783, § 1; Ga. L. 1980, p. 1769, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 2, § 10/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in the first sentence, substituted "the garnishee, the garnishee

may," for "him, he may," and inserted "garnishee" following "timely".

**JUDICIAL DECISIONS**

**Untimely motion.** — Petitioner was not entitled to relief from a default judgment entered in favor of the judgment creditor because the petitioner did not seek relief from the default judgment until well outside the 60-day window pursuant to O.C.G.A. § 18-4-91. *W. Ray Camp, Inc. v. Cavalry Portfolio Servs., LLC*, 308 Ga. App. 597, 708 S.E.2d 560 (2011).

**Cited in** *Lewis v. Capital Bank*, 311 Ga. App. 795, 717 S.E.2d 481 (2011).

**18-4-92. Effect of garnishee's failure to respond properly to summons of garnishment.**

On the trial of the plaintiff's traverse, if the court finds the garnishee has failed to respond properly to the summons of garnishment, the court shall disallow any expenses claimed by the garnishee and enter a judgment for any money or other property delivered to the court with the garnishee's answer, plus any money or other property the court finds subject to garnishment which the garnishee has failed to deliver to the court; provided, however, that the total amount of such judgment

shall in no event exceed the amount claimed due by the plaintiff, together with the costs of the garnishment proceeding. (Code 1933, § 46-514, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 10/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted "respond properly to" for "answer properly" near the beginning of this Code section.

#### 18-4-92.1. Relief of garnishee from liability; definitions.

(a) A garnishee may be relieved from liability for failure to file a garnishee answer properly to the summons of garnishment if the plaintiff failed to provide the information required by subsection (i) of Code Section 18-4-20 that would reasonably enable the garnishee to respond properly to the summons of garnishment and a good faith effort to locate the requested property was made by the garnishee based on the information provided by the plaintiff. In determining whether a garnishee may be relieved of liability imposed by Code Section 18-4-92, the court shall consider and compare the accuracy and quantity of the information supplied by the plaintiff pursuant to subsection (i) of Code Section 18-4-20 with the manner in which the garnishee maintains and locates its records, the compliance by the garnishee with its own procedures, and the conformity of the record systems and procedures with reasonable commercial standards prevailing in the area in which the garnishee is located.

(b) A garnishee and a plaintiff shall not be subject to liability to any party or nonparty to the garnishment at issue arising from the attachment of a lien, the freezing, payment, or delivery into court of property, money, or effects reasonably believed to be that of the defendant if such attachment, freezing, payment, or delivery is reasonably required by a good faith effort to comply with the summons of garnishment. In determining whether such compliance by a garnishee is reasonable, the court shall proceed in the manner prescribed in subsection (a) of this Code section by comparing the efforts of the plaintiff to comply with subsection (i) of Code Section 18-4-20 and the garnishee's record system and procedures.

(c)(1) As used in this subsection, the term:

(A) "Association account" means any account, or any safe-deposit box or similar property, maintained by a corporation, statutory close corporation, limited liability company, partnership, limited partnership, limited liability partnership, foundation, trust, a national, state, or local government or quasi-government entity, or any other incorporated or unincorporated association.

(B) "Fiduciary account" means any account, or any safe-deposit box, maintained by any party in a fiduciary capacity for any other

party other than the defendant in garnishment. Without limiting the foregoing, for purposes of this subsection, the term fiduciary account shall include any “trust account” as defined in Code Section 7-1-810, any account created pursuant to a transfer governed by Code Section 44-5-119, and any agency account or safe-deposit box governed by a power of attorney or other written designation of authority.

(2)(A) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in an association account that may be subject to garnishment by reason of the fact that a defendant is an authorized signer on such association account, unless the summons of garnishment alleges that the association account is being used by the defendant for an improper or unlawful purpose.

(B) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in a fiduciary account that may be subject to garnishment if such account specifically is exempted from garnishment by the laws of this state.

(C) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in a fiduciary account that may be subject to garnishment by reason of the fact that a defendant is a fiduciary of the fiduciary account, unless the summons of garnishment is against the defendant in the defendant's capacity as a fiduciary of the fiduciary account or the summons of garnishment alleges that the fiduciary account is being used by the defendant for an improper or unlawful purpose. (Code 1981, § 18-4-92.1, enacted by Ga. L. 1997, p. 941, § 4; Ga. L. 2012, p. 2, § 11/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in the first sentence of subsection (a), substituted “file a garnishee answer properly to” for “answer

properly” near the beginning, and substituted “respond properly to the” for “answer properly the” near the middle.

#### **18-4-93. Right of defendant to become a party to garnishment proceedings; procedure.**

##### **JUDICIAL DECISIONS**

**Traverse properly granted.** — Trial court did not err in granting a sole proprietorship's traverse, in which it sought to become a party in a golf supplier's garnishment action and asserted a verified claim to the funds at issue, because there was some evidence to support the findings that the sole proprietorship was a separate and distinct entity from the corporation and that the garnishee assented to

the modification of a contract to replace the corporation with the sole proprietorship as contractor; the sole proprietorship had its own tax identification number and liability insurance, and a representative of the garnishee testified that the garnishee was aware that someone had changed the contractor's name and that the garnishee had no business dealings with the corporation. A. M. Buckler &

Assocs. v. Sanders, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

**Relationship to bankruptcy law.** — Chapter 7 debtor was entitled to claim that funds the debtor's employer withheld from the debtor's wages and remitted to a Georgia court were exempt from creditors' claims under O.C.G.A. § 44-13-100(a)(6) because the debtor still had the right at the time the debtor declared bankruptcy to file a traverse under O.C.G.A.

§ 18-4-93 to an affidavit a creditor filed when the creditor garnished the debtor's wages. Because the debtor retained an interest in the funds, the funds became property of the debtor's bankruptcy estate under 11 U.S.C. § 541(a)(1) and could be exempted from the creditors' claims, and a lien the creditor held on the funds could be avoided under 11 U.S.C. § 522(f). *In re Williams*, 460 B.R. 915 (Bankr. N.D. Ga. 2011).

## 18-4-95. Right of claimants of property subject to garnishment to become parties; procedure.

### JUDICIAL DECISIONS

**Claim timely.** — Because a sole proprietorship filed a claim before the trial court entered judgment in the garnishment action or ordered the distribution of the money at issue, the claim was timely under O.C.G.A. § 18-4-95, and the trial court did not err in considering the claim. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

**Traverse properly granted.** — Trial court did not err in granting a sole proprietorship's traverse, in which it sought to become a party in a golf supplier's garnishment action and asserted a verified claim to the funds at issue, because there was some evidence to support the findings

that the sole proprietorship was a separate and distinct entity from the corporation and that the garnishee assented to the modification of a contract to replace the corporation with the sole proprietorship as contractor; the sole proprietorship had its own tax identification number and liability insurance, and a representative of the garnishee testified that the garnishee was aware that someone had changed the contractor's name and that the garnishee had no business dealings with the corporation. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

## 18-4-97. Right of garnishee to actual reasonable expenses in making true garnishee answer of garnishment; procedure for collection; reimbursement.

(a) The garnishee shall be entitled to the garnishee's actual reasonable expenses, including attorney's fees, in preparing and filing a garnishee's answer to a summons of garnishment. The amount so incurred shall be taxed in the bill of costs and shall be paid by the party upon whom the cost is cast, as costs are cast in other cases. The garnishee may deduct \$50.00 or 10 percent of the amount paid into court, whichever is greater, not to exceed \$100.00, as reasonable attorney's fees or expenses.

(b) If the garnishee can show that the garnishee's actual attorney's fees or expenses exceed the amount provided for in subsection (a) of this Code section, the garnishee shall petition the court for a hearing at the time of filing the garnishee's answer without deducting from the amount paid into court. Upon hearing from the parties, the court may

enter an order for payment of actual attorney's fees or expenses proven by the garnishee to have been incurred reasonably in preparing and filing the garnishee's answer.

(c) In the event the garnishee makes the deduction permitted in subsection (a) of this Code section but the costs are later cast upon the garnishee, the garnishee shall forthwith refund to the defendant the funds deducted; and, if the costs are later cast against the plaintiff, the court shall enter judgment in favor of the defendant and against the plaintiff for the amount of the deductions made by the garnishee.

(d) Nothing in this Code section shall limit the reimbursement of costs incurred by a financial institution as provided by Code Section 7-1-237. (Code 1933, § 46-507, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1985, p. 1632, § 3; Ga. L. 1997, p. 941, § 5; Ga. L. 2012, p. 2, § 12/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in subsection (a), substituted the present provisions of the first sentence for the former provisions, which read: "The garnishee shall be entitled to his actual reasonable expenses, including attorney's fees, in making a true answer of garnishment.", in the third sentence, substituted "\$50.00" for "\$25.00" and substituted "\$100.00" for "\$50.00"; in subsection (b), in the first sentence, substituted "the garnishee's" for "his" near the beginning, substituted "the garnishee shall" for "he

must" near the middle and substituted "filing the garnishee's" for "making his" near the end, and substituted "preparing and filing the garnishee's" for "making his" in the second sentence.

**Law reviews.** — For article discussing an advisory opinion issued by the Standing Committee on the Unlicensed Practice of Law on the issue of execution and filing of an answer in the garnishment action by a nonattorney employee of the garnishee, see 16 (No. 1) Ga. St. B.J. 102 (2010).

## ARTICLE 6

### CONTINUING GARNISHMENT PROCEEDINGS

#### **18-4-110. Right of plaintiff who has obtained money judgment to process of continuing garnishment; methods, practices, and procedures for continuing garnishment generally.**

In addition to garnishment proceedings otherwise available under this chapter, in cases where a money judgment has been obtained in a court of this state or a federal court sitting in this state, the plaintiff shall be entitled to the process of continuing garnishment against any garnishee who is an employer of the defendant against whom the judgment has been obtained. Unless otherwise specifically provided in this article, the methods, practices, and procedures for continuing garnishment shall be the same as for any other garnishment as provided in this chapter, including, but not limited to, those proceedings after a garnishee's answer as provided in Code Section 18-4-89. (Code

1933, § 46-701, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 1981, p. 383, § 2; Ga. L. 1985, p. 1632, § 4; Ga. L. 2012, p. 2, § 13/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted “has been” for “shall have been” in the first sentence, and inserted “a garnishee’s” near the end of the last sentence.

**18-4-112. Filing and contents of affidavit for continuing garnishment; issuance of summons; notice and service of summons.**

(a) In addition to the information required by Code Section 18-4-61, an affidavit for continuing garnishment shall state that the plaintiff believes that the garnishee is or may be an employer of the defendant and subject to continuing garnishment and shall request that a summons of continuing garnishment shall issue. Upon the filing of the affidavit with the clerk of any court having jurisdiction over the garnishee, the clerk shall cause a summons of continuing garnishment to issue forthwith, provided that the affidavit shall first be made and approved as containing the information required by Code Section 18-4-61 and by this Code section in one of the ways provided for in Code Section 18-4-61.

(b) Only one summons of continuing garnishment may issue on one affidavit for continuing garnishment, and the defendant shall be given notice of the issuance of the summons using any method provided for in Code Section 18-4-64.

(c) The plaintiff, using either forms provided by the court or forms prepared by the plaintiff, shall cause forms sufficient for seven garnishee answers to a summons of continuing garnishment to be served on the garnishee along with the summons. (Code 1933, § 46-703, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 14/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in subsection (c), substituted “the plaintiff” for “himself” and inserted the first occurrence of “garnishee”.

**18-4-113. Contents of summons of continuing garnishment; filing and contents of garnishee answers.**

(a) The summons of continuing garnishment shall be directed to the garnishee, who shall be required:

(1) To file a first garnishee answer no later than 45 days after service of summons of continuing garnishment, which garnishee answer shall state what property, money, or other effects of the defendant are subject to continuing garnishment from the time of service through and including the day of the first garnishee answer;

(2) To file further garnishee answers for the remaining period covered by the summons of continuing garnishment. Further garnishee answers shall be filed no later than 45 days after the previous garnishee answer date. Further garnishee answers shall state what property, money, or other effects of the defendant are subject to continuing garnishment from the previous garnishee answer date through and including the date on which that next garnishee answer is filed. No subsequent garnishee answers shall be required on a summons of continuing garnishment if the last garnishee answer filed states what property, money, or other effects of the defendant are subject to continuing garnishment from the previous garnishee answer date to and including the one hundred seventy-ninth day after service of summons of continuing garnishment. The last garnishee answer shall be filed, notwithstanding the other provisions of this paragraph, no later than the one hundred ninety-fifth day after service. For purposes of this paragraph, "previous garnishee answer date" means the date upon which the immediately preceding garnishee answer to the summons of continuing garnishment was filed as provided in this subsection; and

(3) To accompany all such garnishee answers with any property, money, or other effects of the defendant admitted in the garnishee answer to be subject to continuing garnishment.

(b) The summons of continuing garnishment shall state the requirements of subsection (a) of this Code section and shall inform the garnishee that failure to comply with such requirements may result in a judgment against the garnishee for the entire amount claimed due on the judgment against the defendant. (Code 1983, § 46-704, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted "garnishee" preceding "answer" and "answers" throughout subsection (a).

## JUDICIAL DECISIONS

**Default judgment.** — Because a default judgment can be entered pursuant to O.C.G.A. § 18-4-115(a) only when the garnishee fails to timely file an answer, and by the plain terms of O.C.G.A. § 18-4-113(a)(1), the time in which an answer must be filed is triggered by the service of a summons of continuing garnishment, a default judgment is entered as provided in § 18-4-115(a) only after the garnishee has been served with proper process or has waived service of process, and § 18-4-115(b) provides relief, therefore, only when process has been served or

waived; when a court enters a default judgment in a continuing garnishment proceeding in which the garnishee has not been served with a summons of continuing garnishment and the court has not obtained jurisdiction of the person of the garnishee, the default judgment is not one entered as provided in § 18-4-115(a), and § 18-4-115(b) affords no relief, and in such a case, the garnishee is entitled to bring a motion to set aside the default judgment under O.C.G.A. § 9-11-60(d)(1). *Lewis v. Capital Bank*, 311 Ga. App. 795, 717 S.E.2d 481 (2011).

**18-4-114. Traverse of garnishee answer by plaintiff.**

If the garnishee's answer is served on the plaintiff as provided in Code Section 18-4-83, the plaintiff shall traverse the garnishee answer within 15 days after it is served, or the garnishee shall be automatically discharged from further liability with respect to the summons so answered. (Code 1933, § 46-707, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted the present provisions of this Code section for the former provisions, which read: "If the garnishee serves his answer on the plaintiff

as provided in Code Section 18-4-83, the plaintiff must traverse the answer within 15 days after it is served or the garnishee is automatically discharged from further liability with respect to such answer."

**18-4-115. Entry of default judgment against garnishee; relief from default judgment.**

(a) If the garnishee fails or refuses to file a garnishee answer at least once every 45 days, the garnishee shall automatically become in default. The default may be opened as a matter of right by the filing of the required garnishee answer within 15 days after the day of default upon payment of costs. If the case is still in default after the expiration of such period of 15 days, judgment by default may be entered at any time thereafter against garnishee for the amount claimed to be due on the judgment obtained against the defendant.

(b) The garnishee may obtain relief from default judgment entered as provided in subsection (a) of this Code section upon the same conditions as provided in Code Section 18-4-91. (Code 1933, § 46-708, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in subsection (a), substituted "a garnishee answer" for "an an-

swer" in the first sentence and inserted "garnishee" in the second sentence.

**18-4-116. Effect of and proceedings upon filing of traverse by defendant.**

(a) In a continuing garnishment proceeding, upon the filing of a traverse by defendant pursuant to Code Section 18-4-93, no further summons of garnishment may issue nor may any money delivered to the court as subject to garnishment be disbursed until the hearing is held upon defendant's traverse. The filing of a traverse by the defendant does not relieve the garnishee of the duties of filing a garnishee answer, of withholding property, money, or other effects subject to continuing garnishment, or of delivering to the court any property, money, or other effects subject to continuing garnishment.

(b) Nothing in this Code section shall affect the right of the defendant to file bond under this chapter. (Code 1933, § 46-705, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

**The 2012 amendment**, effective February 7, 2012, in the second sentence of subsection (a), substituted “a garnishee

answer” for “an answer” and inserted a comma following “garnishment”.

#### 18-4-117. Effect of termination of employment relationship between garnishee and defendant.

Notwithstanding the requirements of Code Section 18-4-113, if the employment relationship between the garnishee and the defendant does not exist at the time of the service of summons of continuing garnishment or terminates during the continuing garnishment, in any garnishee answer required by this article, the garnishee may state that the employment relationship between the garnishee and defendant does not exist or has been terminated, giving the date of termination if terminated on or after service of this summons of continuing garnishment. If no traverse is filed within 15 days after the garnishee answer is served as provided in Code Section 18-4-83, the garnishee shall be automatically discharged from further liability and obligation under Code Section 18-4-113 for that summons with respect to the period of continuing garnishment remaining after the employment relationship is terminated. (Code 1933, § 46-706, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted “garnishee” preceding “answer” in the first and second

sentences, added a comma following “article” in the first sentence, and substituted “shall be” for “is” in the second sentence.

#### 18-4-118. Forms for continuing garnishment.

For purposes of this article, the following forms are declared to be sufficient, along with those provided in Code Section 18-4-66, for continuing garnishment, provided that nothing in this Code section shall be construed to require the use of particular forms in any proceeding under this article:

##### (1) Affidavit of continuing garnishment.

IN THE \_\_\_\_ COURT OF \_\_\_\_ COUNTY  
STATE OF GEORGIA

\_\_\_\_\_  
Plaintiff

)  
)  
)  
)  
)

v.

Civil action  
File no. \_\_\_\_\_

_____	)
Defendant	)
_____	)
_____	)
Garnishee	)
_____	)
_____	)
Address	)

### AFFIDAVIT OF CONTINUING GARNISHMENT

Personally appeared the undersigned affiant who on oath says that he is the above plaintiff, his agent, or his attorney at law and that the above defendant is indebted to said plaintiff on a judgment described as follows:

\_\_\_\_\_ is the case number in the \_\_\_\_\_ Court of \_\_\_\_\_ County which rendered the judgment against the defendant, \$\_\_\_\_ being the balance thereon.

Affiant further states that affiant believes that garnishee is or may be an employer of the defendant and subject to continuing garnishment.

\_\_\_\_\_ Affiant

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Plaintiff's attorney

(2) Summons of continuing garnishment.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

_____	)
Plaintiff	)
_____	)
v.	)
_____	)
Defendant	)
Social security	)
number	)
_____	)
Garnishee	)
_____	)

Civil action  
File no. \_\_\_\_\_

---

Address

)

## SUMMONS OF CONTINUING GARNISHMENT

To: \_\_\_\_\_ Garnishee

Amount claimed due by plaintiff \_\_\_\_\_  
(To be completed by plaintiff) \$ \_\_\_\_\_Plus court costs due on this summons \_\_\_\_\_  
(To be completed by clerk) \$ \_\_\_\_\_

YOU ARE HEREBY COMMANDED to hold immediately all property, money, wages, except what is exempt, belonging to the defendant, or debts owed to the defendant named above at the time of service of this summons and between the time of service of this summons to and including the one hundred seventy-ninth day thereafter. Not later than 45 days after you are served with this summons, you are commanded to file your garnishee answer in writing with the clerk of this court and serve a copy upon the plaintiff or his attorney named below. This garnishee answer shall state what property, money, and wages, except what is exempt, belonging to the defendant, or debts owed to the defendant, you hold or owe at the time of service of this summons and between the time of such service and the time of making your first garnishee answer. Thereafter, you are required to file further garnishee answers no later than 45 days after your last garnishee answer. Every further garnishee answer shall state what property, money, and wages, except what is exempt, belonging to the defendant, or debts owed to the defendant, you hold or owe at and from the time of the last garnishee answer to the time of the current garnishee answer. The last garnishee answer required by this summons shall be filed no later than the one hundred ninety-fifth day after you receive this summons. Money or other property admitted in a garnishee answer to be subject to continuing garnishment shall be delivered to the court with your garnishee answers. Should you fail to file garnishee answers as required by this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant.

Witness the Honorable \_\_\_\_\_, Judge of said Court.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

Clerk,

\_\_\_\_\_, Court of \_\_\_\_\_ County

---

Plaintiff's attorney

---

Address

Service perfected on garnishee, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

Deputy marshal, sheriff,  
or constable

(3) Garnishee answer of continuing garnishment.

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

Plaintiff	)	
	)	
	)	
v.	)	Civil action
	)	File no. _____
Defendant	)	
	)	
	)	
Garnishee	)	
	)	
Address	)	

GARNISHEE ANSWER OF CONTINUING GARNISHMENT

1.

From the time of service of this summons of continuing garnishment, if this is the first garnishee answer to such summons, otherwise from the time of the last garnishee answer to this summons of continuing garnishment, until the time of this garnishee answer, garnishee had in garnishee's possession the following described property of the defendant:

---



---

2.

From the time of service of this summons of continuing garnishment, if this is the first garnishee answer to such summons, otherwise from the time of the last garnishee answer to this summons of continuing garnishment, until the time of this garnishee answer, all debts accruing from garnishee to the defendant are in the amount of \$\_\_\_\_\_.

## 3.

\$\_\_\_\_ of the amount named in paragraph 2 was wages earned at the rate of \$\_\_\_\_ per \_\_\_\_ for the period beginning (date), \_\_\_\_, through the time of making this garnishee answer. The amount of wages which is subject to this garnishment is computed as follows:

\$\_\_\_\_\_ Gross earnings

\$\_\_\_\_\_ Total social security and withholding tax

\$\_\_\_\_\_ Total disposable earnings

\$\_\_\_\_\_ Amount of wages subject to continuing garnishment

## 4.

( ) If checked, defendant is not presently employed by this garnishee and, if employed by garnishee on or after service of this summons of continuing garnishment, was most recently terminated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

## 5.

( ) If checked, this is the last garnishee answer this garnishee is required to file to the presently pending summons of continuing garnishment in the above-styled case.

## 6.

Garnishee further states: \_\_\_\_\_.

---

Garnishee,  
garnishee's attorney, or officer  
or employee of an entity garnishee

(CERTIFICATE OF SERVICE)

(Code 1933, § 46-709, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 1985, p. 1632, § 5; Ga. L. 1999, p. 81, § 18; Ga. L. 2012, p. 2, § 16/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted "garnishee" preceding "answer" and "answers" throughout paragraphs (2) and (3); in paragraph (2), in the undesignated text, inserted a comma following "defendant" in the fifth sentence and in the next-to-last sentence, substituted "a garnishee answer" for "an answer" and substituted "shall be" for

"must be"; in paragraph (3), substituted "Garnishee answer" for "Answer" at the beginning, substituted "garnishee's possession" for "his possession" in the undesignated text, and substituted "Garnishee, garnishee's attorney, or officer or employee of an entity garnishee" for "Garnishee or his attorney at law" near the end.

**ARTICLE 7**  
**CONTINUING GARNISHMENT FOR SUPPORT**

**18-4-133. Service of summons; requirements as to filing of first garnishee answer accompanied by money; application of money.**

(a) The summons of continuing garnishment for support shall be directed to the garnishee who shall be required to file a first garnishee answer no later than 45 days after service, which garnishee answer shall state what earnings were payable to the defendant from the time of service through and including the day of the first garnishee answer and the basis for the computation of same, including the rate of pay and hours worked, or salaries, commissions, or other basis of compensation.

(b) The garnishee shall accompany such initial garnishee answer with money of the defendant admitted in the garnishee answer to be subject to continuing garnishment for support. In computing the amounts subject to this article, the provisions of subsection (f) of Code Section 18-4-20 shall control.

(c) The money paid into court with the initial garnishee answer, after deduction for costs, shall be first applied to the periodic support payment accrued on a daily basis from the date of the affidavit of the plaintiff to the date of the initial garnishee answer. All sums in excess of such periodic payment shall be applied to the original arrearage. Original arrearage shall mean those arrears existing as of the date of the making of the plaintiff's affidavit, plus any amounts includable pursuant to subsection (b) of Code Section 18-4-134. (Code 1981, § 18-4-133, enacted by Ga. L. 1985, p. 785, § 2; Ga. L. 2012, p. 2, § 17/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted "garnishee" preceding "answer" throughout this Code section.

**18-4-134. Filing further garnishee answers and tendering money; application of money; filing of final garnishee answer by garnishee upon termination of defendant's employment.**

(a) If the amount claimed as original arrearage as of the date of the making of the plaintiff's affidavit is not satisfied by the money payable into court under the initial garnishee answer, after application of the funds as set forth in subsection (c) of Code Section 18-4-133, the garnishee shall file further garnishee answers no later than 45 days after the previous garnishee answer date, stating the earnings accrued and the basis of their accrual and tendering such money accruing in

such period. The amounts paid into court pursuant to subsequent garnishee answers, over and above the periodic payment accruing within such period, shall be applied to the original arrearage until the same is retired.

(b) If the earnings paid into court pursuant to any garnishee answer are less than the sums due under the periodic support requirement accruing over the same period of time, after allowance for any costs deductible from same, the resulting difference shall be added to the amount due as original arrearage until the same is retired by subsequent payments.

(c) The garnishee shall file additional garnishee answers until the original arrearage is retired and all periodic support payments are current.

(d) Upon the termination of employment of the defendant by the garnishee, the garnishee shall be required to file a final garnishee answer stating the date and reason for the defendant's termination from employment and stating, to the best of the garnishee's information, the defendant's present residential address and employer. (Code 1981, § 18-4-134, enacted by Ga. L. 1985, p. 785, § 2; Ga. L. 2012, p. 2, § 17/HB 683.)

**The 2012 amendment**, effective February 7, 2012, inserted "garnishee" preceding "answer" and "answers" throughout this Code section; in subsection (a), deleted "of the garnishee" preceding ", after application" in the first sentence and

deleted "answer" preceding "period" near the end of the first and second sentences; and deleted "by the garnishee" preceding "are less than" near the beginning of subsection (b).

#### **18-4-135. Period of attachment of writ of garnishment; garnishee's reliance upon information in affidavit of garnishment.**

The writ of garnishment described in this article shall attach for so long as the defendant is employed by the garnishee and shall not terminate until the original arrearage is retired. The garnishee may rely upon the information as to the termination date of the duty of support of any individual claimed in the affidavit of garnishment, the amount of the duty of periodic support to be paid, any sums paid by the defendant between the date of the filing of the plaintiff's affidavit and the date of the initial garnishee answer, and the amount of the original arrearage existing as of the date of the affidavit of garnishment, unless the same are traversed by the defendant and the court enters any finding otherwise. (Code 1981, § 18-4-135, enacted by Ga. L. 1985, p. 785, § 2; Ga. L. 2012, p. 2, § 17/HB 683.)

**The 2012 amendment**, effective February 7, 2012, substituted “garnishee answer” for “answer of the garnishee” near

the middle of the second sentence of this Code section.

---

## CHAPTER 5

### DEBT ADJUSTMENT

#### 18-5-1. Definitions.

#### JUDICIAL DECISIONS

**Forum selection provision invalid when denying debtor rights.** — Trial court erred in granting a Texas corporation’s motion to dismiss a debtors’ action alleging that the debt adjustment services a Texas corporation provided them violated Georgia statutes specifically regulating the business of “debt adjusting” as set forth in O.C.G.A. § 18-5-1 et seq. on the ground that the parties’ contract contained a provision selecting Texas as the forum for any dispute because, if enforced, the contract’s forum selection and choice

of law provisions requiring the debtors to bring their action before a Texas court applying Texas law would operate in tandem to deprive the debtors of specific statutory protections set forth in § 18-5-1 et seq., relating to debt adjustment agreements; because that would violate Georgia’s public policy established in those provisions the forum selection and choice of law provisions in the contract were invalid and unenforceable. *Moon v. CSA--Credit Solutions of Am., Inc.*, 304 Ga. App. 555, 696 S.E.2d 486 (2010).

# TITLE 19

## DOMESTIC RELATIONS

Chap.

3. Marriage Generally, 19-3-1 through 19-3-68.
6. Alimony and Child Support, 19-6-1 through 19-6-53.
7. Parent and Child Relationship Generally, 19-7-1 through 19-7-54.
8. Adoption, 19-8-1 through 19-8-43.
9. Child Custody Proceedings, 19-9-1 through 19-9-129.
13. Family Violence, 19-13-1 through 19-13-56.
15. Child Abuse, 19-15-1 through 19-15-7.

---

## CHAPTER 2

### DOMICILE

#### **19-2-1. Place of domicile; how domicile changed, generally.**

##### JUDICIAL DECISIONS

**“Residence” and “domicile”, etc.** Trial court erred in finding that venue was proper in Effingham County, Georgia because the defendant, who maintained residences in both Effingham County and Chatham County, Georgia, was domiciled in Chatham County. *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

---

## CHAPTER 3

### MARRIAGE GENERALLY

#### Article 2

##### License and Ceremony

Sec.

19-3-35.1. AIDS brochures; listing of HIV test sites; acknowledgment of receipt.

19-3-40. Blood test for sickle cell dis-

Sec.

19-3-41.

ease; information to be provided.

Marriage manual; preparation by Department of Public Health; distribution at issuance of license; rules and regulations.

**Cross references.** — Recognition of marriage, Ga. Const. 1983, Art. I, Sec. IV. Lawrence, and Liberty," see 27 Ga. St. U. L. Rev. 609 (2011).

**Law reviews.** — For article, "Lochner,

## ARTICLE 1

### GENERAL PROVISIONS

#### 19-3-1.1. Common-law marriage; effectiveness.

##### JUDICIAL DECISIONS

###### **Evidence of common law marriage.**

— Trial court did not err in admitting evidence regarding the conduct of a common law husband and a common law wife after moving to Georgia because although the parties' cohabitation and public recognition of their marriage in Georgia could not establish a common-law marriage, those facts could corroborate other evidence of a prior agreement to marry entered into in Alabama. *Norman v. Ault*, 287 Ga. 324, 695 S.E.2d 633 (2010).

**Common law marriage found.** — Jury was authorized to conclude that a common law marriage existed between a common law husband and a common law wife because the evidence satisfied

enough of the criteria generally indicative of public recognition to determine that the husband assented to the marriage in another state; three years after the husband's divorce, the wife began living in Alabama in the same home as him, sharing a bedroom, and doing housework, the parties would tell people that the other was his or her spouse, and the husband would tell the wife all the time that "in God's eyes, you are my wife," the husband had sexual relations only with the wife, and before the parties moved to Georgia, the husband executed a deed filed in Alabama conveying property to himself, his daughter, and his wife. *Norman v. Ault*, 287 Ga. 324, 695 S.E.2d 633 (2010).

#### 19-3-6. Effect of restraints on marriage; when valid.

##### JUDICIAL DECISIONS

**Statute has nothing to do with adoption standards.** — Public policy of the state as enunciated by the General Assembly is to consider the best interest of the child when determining whether he or she should be adopted, O.C.G.A. § 19-8-18(b); in stating that marriage is encouraged, O.C.G.A. § 19-3-6 forbids

most efforts to restrain or discourage marriage by contract, condition, limitation, or otherwise, and § 19-3-6 has nothing to do with the standards the courts must apply in determining whether to allow a child to be adopted. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

#### 19-3-8. Interspousal tort immunity continued.

##### JUDICIAL DECISIONS

###### ANALYSIS

###### GENERAL CONSIDERATION

### General Consideration

**Requirement to apportion damages did not violate interspousal tort immunity doctrine.** — Application of the apportionment of damages pursuant to O.C.G.A. § 51-12-33 did not violate the interspousal tort immunity doctrine, O.C.G.A. § 19-3-8, because the trial court's holding that the jury should have been instructed to apportion the award of

damages to a wife according to the jury's determination of the percentage of fault of her husband and a driver, if any, in no way requires the wife to file suit against her husband, but instead, precluded the wife from recovering from the driver that portion of her damages, if any, that a trier of fact concluded resulted from the negligence of her husband. *Barnett v. Farmer*, 308 Ga. App. 358, 707 S.E.2d 570 (2011).

### 19-3-9. Each spouse's property separate.

#### JUDICIAL DECISIONS

**Bankruptcy exemptions.** — When husband and wife debtors sought to exempt their income tax refunds, pursuant to O.C.G.A. § 44-13-100(a)(6), the procedure set forth in *In re Crowson*, 431 B.R. 484, 489 (10th Cir. B.A.P. 2010) was to be followed. Each debtor was treated separately under 11 U.S.C. § 522(m), and Georgia law had no presumption of equal ownership of property between spouses under O.C.G.A. § 19-3-9. *In re Evans*, 449 B.R. 827 (Bankr. N.D. Ga. 2010).

**Retention of tax refund by Chapter 7 debtors.** — Chapter 7 debtors could not retain total tax refunds because, pursuant to Georgia law, which—pursuant to O.C.G.A. § 19-3-9—had no presumption of equal ownership of property between spouses, the refund in its entirety was the sole property of the sole income earner at the time of the bankruptcy filing. *In re Hraga*, 467 B.R. 527 (Bankr. N.D. Ga. 2011).

#### RESEARCH REFERENCES

**ALR.** — Inherited property as marital or separate property in divorce action, 38 ALR6th 313.

Divorce and separation: appreciation in value of separate property during mar-

riage with contribution by either spouse as separate or community property (doctrine of "active appreciation"), 39 ALR6th 205.

## ARTICLE 2

### LICENSE AND CEREMONY

#### 19-3-35.1. AIDS brochures; listing of HIV test sites; acknowledgement of receipt.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) The Department of Public Health shall prepare a brochure describing AIDS, HIV, and the dangers, populations at risk, risk behaviors, and prevention measures relating thereto. That department shall also prepare a listing of sites at which confidential and anonymous HIV tests are provided without charge. That department shall further

prepare a form for acknowledging that the brochures and listings have been received, as required by subsection (c) of this Code section. The brochures, listings, and forms prepared by the Department of Public Health (formerly known as the Department of Human Resources for these purposes) under this subsection shall be prepared and furnished to the office of each judge of the probate court no later than October 1, 1988.

(c) On and after October 1, 1988, each person who makes application for a marriage license shall receive from the office of the probate judge at the time of the application the AIDS brochure and listing of HIV test sites prepared and furnished pursuant to subsection (b) of this Code section. On and after October 1, 1988, no marriage license shall be issued unless both the proposed husband and the proposed wife sign a form acknowledging that both have received the brochure and listing. (Code 1981, § 19-3-35.1, enacted by Ga. L. 1988, p. 1799, § 5; Ga. L. 2009, p. 453, § 1-16/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first and last sentences of subsection (b).

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

#### 19-3-40. Blood test for sickle cell disease; information to be provided.

(a) As used in this Code section, the term “blood test for sickle cell disease” means a blood test for sickle cell anemia, sickle cell trait, and other detectable abnormal hemoglobin.

(b) The Department of Public Health shall prepare information for public dissemination on the department’s website describing the importance of obtaining a blood test for sickle cell disease and explaining the causes and effects of such disease. Such information shall recommend that each applicant applying for a marriage license obtain a blood test for sickle cell disease prior to obtaining a marriage license. Such information may also be provided as a brochure or other document. The department shall make such information available in electronic format to the probate courts of this state which shall disseminate such information to all persons applying for marriage licenses. (Code 1981, § 19-3-40, enacted by Ga. L. 2009, p. 314, § 1/HB 184; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community

Health” in the first sentence of subsection (b).

**Law reviews.** — For article on the

2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

**19-3-41. Marriage manual; preparation by Department of Public Health; distribution at issuance of license; rules and regulations.**

(a) The Department of Public Health shall prepare a marriage manual for distribution by the judge of the probate court or his clerk to all applicants for a marriage license. The manual shall include, but shall not be limited to, material on family planning.

(b) The manual provided for in subsection (a) of this Code section shall be issued by the judge of the probate court or his clerk to applicants for a marriage license at the same time the marriage license is issued.

(c) The Department of Public Health shall promulgate rules and regulations to implement this Code section.

(d) In order to be nonsectarian, the manual will include resource referral information for those who might have questions regarding religious beliefs in the areas covered by the marriage manual. (Code 1933, § 53-201.1, enacted by Ga. L. 1973, p. 879, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of subsection (a) and in subsection (c).

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

### ARTICLE 3

#### MARRIAGE ARTICLES, CONTRACTS, AND SETTLEMENTS

**19-3-63. Construction of marriage contract; attestation.**

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

## CHAPTER 5

### DIVORCE

**Law reviews.** — For article, “The Renewed Significance of Title in Dividing Marital Assets,” see 16 (No. 6) Ga. St. B.J. 24 (2011).

## 19-5-13. Disposition of property in accordance with verdict.

### JUDICIAL DECISIONS

#### **Alteration of divorce decree in contempt proceeding.**

Trial court erred in holding a husband in contempt for refusing to sign an agreed domestic relations order because the trial court erroneously modified a divorce decree; in supplying the missing percentage allocation of a husband's military retirement benefits, the trial court did more than construe or clarify imprecise language in the agreement because the trial court eschewed the plain language of the agreement allocating to the wife only such amounts as the Navy would "require" and substituted for that provision a fifty percent allocation. *Morgan v. Morgan*, 288 Ga. 417, 704 S.E.2d 764 (2011).

#### **Equitable division when spouse conveyed property to parent prior to divorce action.** — Property which a spouse conveyed by deed to the spouse's

parent before the other spouse filed for a divorce was not subject to equitable division in the divorce action brought by the other spouse because the other spouse chose to abandon the avenue for recovery that the other spouse initiated to show that the property was still subject to equitable division. *Armour v. Holcombe*, 288 Ga. 50, 701 S.E.2d 169 (2010).

#### **Pension benefits.**

In a divorce action, a trial court did not abuse the court's discretion in declining to apply the doctrine of judicial estoppel to defeat the wife's claim to any share of her retirement accounts because the husband failed to show that the wife's retirement accounts were not excludable or exempt from the bankruptcy estate under 11 U.S.C. § 522(d)(12). *Klardie v. Klardie*, 287 Ga. 499, 697 S.E.2d 207 (2010).

### RESEARCH REFERENCES

**ALR.** — Inherited property as marital or separate property in divorce action, 38 ALR6th 313.

Divorce and separation: appreciation in value of separate property during mar-

riage with contribution by either spouse as separate or community property (doctrine of "active appreciation"), 39 ALR6th 205.

## CHAPTER 6

### ALIMONY AND CHILD SUPPORT

#### Article 1

##### General Provisions

Sec.

19-6-15. Child support in final verdict

Sec.

or decree; guidelines for determining amount of award; continuation of duty to provide support; duration of support.

**ARTICLE 1**  
**GENERAL PROVISIONS**

**19-6-1. Alimony defined; when authorized; how determined; lien on estate of party dying prior to order; certain changes in parties' assets prohibited pending determination.**

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**General Consideration**

**Challenge to constitutionality.** — Pro se litigant sued government and court officials alleging Georgia's alimony provisions, O.C.G.A. § 19-6-1 et seq., violated: (1) the right to privacy, protections of the equal protection clause, and prohibitions against involuntary servitude as contained in the U.S. Constitution; and (2) the right to privacy, due process provisions, equal protection provisions, privileges and immunities clause, prohibitions on involuntary servitude, and prohibitions against legislation based on social status as guaranteed by the Georgia Constitution. However, the federal court determined that the plaintiff must raise these constitutional challenges as part of

the litigant's state divorce proceedings, and, furthermore, that Georgia had an important state interest in enforcing these provisions. Cormier v. Green, 2005 U.S. App. LEXIS 14034 (11th Cir. July 12, 2005) (Unpublished).

**Alimony award proper.**

Trial court did not abuse the court's discretion in setting alimony at \$1,250 per month, pursuant to O.C.G.A. §§ 19-6-1(c) and 19-6-5(a), because the trial court properly considered, *inter alia*, the value of the husband's pension, the overwhelming marital debt, the husband's contribution of inherited assets to the marriage, and the wife's recent promotion, accompanied by a raise in salary and benefits. Hammond v. Hammond, 290 Ga. 518, 722 S.E.2d 729 (2012).

**19-6-2. Attorney's fees; when granted; grant of final judgment; how enforced; action by attorney.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**  
**ATTORNEY'S FEES**

### General Consideration

**Cited** in Harris v. Williams, 304 Ga. App. 390, 696 S.E.2d 131 (2010); Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011); Avren v. Garten, 289 Ga. 186, 710 S.E.2d 130 (2011).

### Attorney's Fees

#### Consideration of parties' financial circumstances.

There was no abuse of discretion in a trial court's denial of attorney fees to either party pursuant to O.C.G.A. § 19-6-2(a)(1) in their divorce action as the trial court properly based the court's determination upon consideration of the parties' relative financial positions; the husband could not seek attorney fees under O.C.G.A. § 13-6-11. Sponsler v. Sponsler, 287 Ga. 725, 699 S.E.2d 22 (2010).

In a divorce proceeding, a trial court's failure to award attorney's fees to a former spouse under O.C.G.A. § 19-6-2 was not an abuse of discretion as the trial court properly considered the relative financial positions of the parties. Hunter v. Hunter, 289 Ga. 9, 709 S.E.2d 263 (2011).

#### Insufficient grounds for court's award.

Trial court erred in awarding a husband attorney fees because the court merely ordered the wife to pay attorney fees to the husband without findings of fact and without any cogent evidence of the work performed by the husband's counsel and the nature thereof. Holloway v. Holloway, 288 Ga. 147, 702 S.E.2d 132 (2010).

#### Attorney's fees award proper.

Record did not support a husband's claim that the trial court made an attorney fees award because the court thought it was improper for a man to seek alimony and that the case should have settled because the trial court specifically set

forth in the divorce decree that in denying alimony, the court considered the conditions of the parties and that rehabilitative alimony to the husband was not warranted since the request was premised on his less-than-credible claim that the wife had agreed with his lack of employment and his being a stay-at-home parent; as to the award of fees in favor of the wife, the trial court expressly considered the parties' fiscal circumstances as the court was obligated to do under O.C.G.A. § 19-6-2(a)(1). Klardie v. Klardie, 287 Ga. 499, 697 S.E.2d 207 (2010).

Trial court's award of \$60,000 attorney's fees to a wife under O.C.G.A. § 9-15-14 was upheld based on the trial court's order, which recounted several instances of the husband's misconduct during the litigation and found that they caused numerous delays, extra motions, and extra conversations, and forced the wife's counsel to make multiple requests for documents and answers and to go to otherwise unnecessary efforts to obtain needed documents. The award was also proper under O.C.G.A. § 19-6-2(a)(1) to ensure effective representation of both spouses. Miller v. Miller, 288 Ga. 274, 705 S.E.2d 839 (2010).

Trial court did not abuse the court's discretion in awarding a wife attorney fees because the court considered the relative financial positions of the wife and the husband, and although the final judgment and decree did not cite a statutory basis for the attorney fee award, that omission did not mean that the basis of the award was in question; the award was made pursuant to O.C.G.A. § 19-6-2 because no motion for attorney fees was made pursuant to O.C.G.A. § 9-15-14, and there was no indication that the trial court considered an award of attorney fees on that basis. Simmons v. Simmons, 288 Ga. 670, 706 S.E.2d 456 (2011).

### 19-6-5. Factors in determining amount of alimony; effect of remarriage on obligations for alimony.

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

**JUDICIAL DECISIONS****ANALYSIS****FACTORS TO BE CONSIDERED****Factors to be Considered****Award of alimony appropriate based on consideration of factors.**

Trial court did not abuse the court's discretion in setting alimony at \$1,250 per month, pursuant to O.C.G.A. §§ 19-6-1(c) and 19-6-5(a), because the trial court

properly considered, *inter alia*, the value of the husband's pension, the overwhelming marital debt, the husband's contribution of inherited assets to the marriage, and the wife's recent promotion, accompanied by a raise in salary and benefits. *Hammond v. Hammond*, 290 Ga. 518, 722 S.E.2d 729 (2012).

**19-6-14. Child support and custody pending final divorce; effect on liability to third persons for necessaries.****JUDICIAL DECISIONS**

**Cited** in *Segars v. State*, 309 Ga. App. 732, 710 S.E.2d 916 (2011).

**19-6-15. Child support in final verdict or decree; guidelines for determining amount of award; continuation of duty to provide support; duration of support.**

(a) **Definitions.** As used in this Code section, the term:

(1) "Adjusted child support obligation" means the basic child support obligation adjusted by health insurance and work related child care costs.

(2) "Adjusted income" means the determination of a parent's monthly income, calculated by deducting from that parent's monthly gross income one-half of the amount of any applicable self-employment taxes being paid by the parent, any preexisting order for current child support which is being paid by the parent, and any theoretical child support order for other qualified children, if allowed by the court. For further reference see paragraph (5) of subsection (f) of this Code section.

(3) "Basic child support obligation" means the amount of support displayed on the child support obligation table which corresponds to the combined adjusted income of the custodial parent and the noncustodial parent and the number of children for whom child support is being determined. This amount is rebuttably presumed to be the appropriate amount of child support to be provided by the custodial parent and the noncustodial parent prior to consideration of percentage of income, health insurance, work related child care costs, and deviations.

(4) "Child" means child or children.

(5) Reserved.

(6) "Child support obligation table" means the chart which displays the dollar amount of the basic child support obligation corresponding to various levels of combined adjusted income of the children's parents and the number of children for whom a child support order is being established or modified. The child support obligation table shall be used to calculate the basic child support obligation according to the provisions of this Code section. For further reference see subsections (n) and (o) of this Code section.

(6.1) "Child support services" means the agency within the Department of Human Services which provides and administers child support services.

(7) "Combined adjusted income" means the amount of adjusted income of the custodial parent added to the amount of adjusted income of the noncustodial parent.

(8) "Court" means a judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(9) "Custodial parent" means the parent with whom the child resides more than 50 percent of the time. Where a custodial parent has not been designated or where a child resides with both parents an equal amount of time, the court shall designate the custodial parent as the parent with the lesser support obligation and the other parent as the noncustodial parent. Where the child resides equally with both parents and neither parent can be determined as owing a greater amount than the other, the court shall determine which parent to designate as the custodial parent for the purpose of this Code section.

(10) "Deviation" means an increase or decrease from the presumptive amount of child support if the presumed order is rebutted by evidence and the required findings of fact are made by the court pursuant to subsection (i) of this Code section.

(11) "Final child support order" means the presumptive amount of child support adjusted by any deviations.

(12) "Gross income" means all income to be included in the calculation of child support as set forth in subsection (f) of this Code section.

(13) "Health insurance" means any general health or medical policy. For further reference see paragraph (2) of subsection (h) of this Code section.

(14) "Noncustodial parent" means the parent with whom the child resides less than 50 percent of the time or the parent who has the

greater payment obligation for child support. Where the child resides equally with both parents and neither parent can be determined as owing a lesser amount than the other, the court shall determine which parent to designate as the noncustodial parent for the purpose of this Code section.

(15) "Nonparent custodian" means an individual who has been granted legal custody of a child, or an individual who has a legal right to seek, modify, or enforce a child support order.

(16) "Parent" means a person who owes a child a duty of support pursuant to Code Section 19-7-2.

(17) "Parenting time deviation" means a deviation allowed for the noncustodial parent based upon the noncustodial parent's court ordered visitation with the child. For further reference see subsections (g) and (i) of this Code section.

(18) "Preexisting order" means:

(A) An order in another case that requires a parent to make child support payments for another child, which child support the parent is actually paying, as evidenced by documentation as provided in division (f)(5)(B)(iii) of this Code section; and

(B) That the date of filing with the clerk of court of the initial order for each such other case is earlier than the date of filing with the clerk of court of the initial order in the case immediately before the court, regardless of the age of any child in any of the cases.

(19) "Presumptive amount of child support" means the basic child support obligation including health insurance and work related child care costs.

(20) "Qualified child" or "qualified children" means any child:

(A) For whom the parent is legally responsible and in whose home the child resides;

(B) That the parent is actually supporting;

(C) Who is not subject to a preexisting order; and

(D) Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

Qualified children shall not include stepchildren or other minors in the home that the parent has no legal obligation to support.

(21) "Split parenting" can occur in a child support case only if there are two or more children of the same parents, where one parent is the custodial parent for at least one child of the parents, and the other parent is the custodial parent for at least one other child of the

parents. In a split parenting case, each parent is the custodial parent of any child spending more than 50 percent of the time with that parent and is the noncustodial parent of any child spending more than 50 percent of the time with the other parent. A split parenting situation shall have two custodial parents and two noncustodial parents, but no child shall have more than one custodial parent or noncustodial parent.

(22) "Theoretical child support order" means a hypothetical child support order for qualified children calculated as set forth in subparagraph (f)(5)(C) of this Code section which allows the court to determine the amount of child support as if a child support order existed.

(23) "Uninsured health care expenses" means a child's uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance. For further reference see paragraph (3) of subsection (h) of this Code section.

(24) "Work related child care costs" means expenses for the care of the child for whom support is being determined which are due to employment of either parent. In an appropriate case, the court may consider the child care costs associated with a parent's job search or the training or education of a parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the court, if the parent proves by a preponderance of the evidence that the job search, job training, or education will benefit the child being supported. The term shall be projected for the next consecutive 12 months and averaged to obtain a monthly amount. For further reference see paragraph (1) of subsection (h) of this Code section.

(25) "Worksheet" or "child support worksheet" means the worksheet used to record information necessary to determine and calculate child support. In child support services cases in which neither parent prepared a worksheet, the court may rely solely on the worksheet prepared by the child support services as a basis for its order. For further reference see subsection (m) of this Code section.

(b) **Process of calculating child support.** Pursuant to this Code section, the determination of child support shall be calculated as follows:

(1) Determine the monthly gross income of both the custodial parent and the noncustodial parent. Gross income may include

imputed income, if applicable. Gross income shall be calculated on a monthly basis. The determination of monthly gross income shall be entered on the Child Support Schedule A — Gross Income;

(2) Adjust each parent's monthly gross income by deducting the following from the parents' monthly gross income and entering it on the Child Support Schedule B — Adjusted Income if any of the following apply:

(A) One-half of the amount of self-employment taxes;

(B) Preexisting orders; and

(C) Theoretical child support order for qualified children, if allowed by the court;

(3) Add each parent's adjusted income together to compute the combined adjusted income;

(4) Locate the basic child support obligation by referring to the child support obligation table. Using the figure closest to the amount of the combined adjusted income, locate the amount of the basic child support obligation in the column underneath the number of children for whom support is being determined. If the combined adjusted income falls between the amounts shown in the table, then the basic child support obligation shall be based on the income bracket most closely matched to the combined adjusted income;

(5) Calculate the pro rata share of the basic child support obligation for the custodial parent and the noncustodial parent by dividing the combined adjusted income into each parent's adjusted income to arrive at each parent's pro rata percentage of the basic child support obligation;

(6) Find the adjusted child support obligation amount by adding the additional expenses of the costs of health insurance and work related child care costs, prorating such expenses in accordance with each parent's pro rata share of the obligation and adding such expenses to the pro rata share of the obligation. The monthly cost of health insurance premiums and work related child care costs shall be entered on the Child Support Schedule D — Additional Expenses. The pro rata share of the basic child support obligation and the pro rata share of the combined additional expenses shall be added together to create the adjusted child support obligation;

(7) Determine the presumptive amount of child support for the custodial parent and the noncustodial parent resulting in a sum certain single payment due to the custodial parent by assigning or deducting credit for actual payments for health insurance and work related child care costs;

(8) In accordance with subsection (i) of this Code section, deviations subtracted from or increased to the presumptive amount of child support are applied, if applicable, and if supported by the required findings of fact and application of the best interest of the child standard. The proposed deviations shall be entered on the Child Support Schedule E — Deviations. In the court's or the jury's discretion, deviations may include, but are not limited to, the following:

- (A) High income;
- (B) Low income;
- (C) Other health related insurance;
- (D) Life insurance;
- (E) Child and dependent care tax credit;
- (F) Travel expenses;
- (G) Alimony;
- (H) Mortgage;
- (I) Permanency plan or foster care plan;
- (J) Extraordinary expenses;
- (K) Parenting time; and
- (L) Nonspecific deviations;

(9) The final child support order shall be the presumptive amount of child support as increased or decreased by deviations and any benefits which the child receives under Title II of the federal Social Security Act shall be applied against the final child support order. The final child support amount for each parent shall be entered on the child support worksheet, together with the information from each of the utilized schedules;

(10) In addition, the parents shall allocate the uninsured health care expenses which shall be based on the pro rata responsibility of the parents or as otherwise ordered by the court. Each parent's pro rata responsibility for uninsured health care expenses shall be entered on the child support worksheet; and

(11) In a split parenting case, there shall be a separate calculation and final child support order for each parent.

**(c) Applicability and required findings.**

(1) The child support guidelines contained in this Code section are a minimum basis for determining the amount of child support and

shall apply as a rebuttable presumption in all legal proceedings involving the child support responsibility of a parent. This Code section shall be used when the court enters a temporary or permanent child support order in a contested or noncontested hearing or order in a civil action filed pursuant to Code Section 19-13-4. The rebuttable presumptive amount of child support provided by this Code section may be increased or decreased according to the best interest of the child for whom support is being considered, the circumstances of the parties, the grounds for deviation set forth in subsection (i) of this Code section, and to achieve the state policy of affording to children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means.

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent authorized by subsection (e) of this Code section. In the final judgment or decree in a divorce case in which there are minor children, or in other cases which are governed by the provisions of this Code section, the court shall:

(A) Specify in what sum certain amount and from which parent the child is entitled to permanent support as determined by use of the worksheet;

(B) Specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid;

(C) Include a written finding of the parent's gross income as determined by the court or the jury;

(D) Determine whether health insurance for the child involved is reasonably available at a reasonable cost to either parent. If the health insurance is reasonably available at a reasonable cost to the parent, then the court shall order that the child be covered under such health insurance;

(E) Include written findings of fact as to whether one or more of the deviations allowed under this Code section are applicable, and if one or more such deviations are applicable as determined by the court or the jury, the written findings of fact shall further set forth:

(i) The reasons the court or the jury deviated from the presumptive amount of child support;

(ii) The amount of child support that would have been required under this Code section if the presumptive amount of child support had not been rebutted; and

(iii) A finding that states how the court's or the jury's application of the child support guidelines would be unjust or inappro-

priate considering the relative ability of each parent to provide support and how the best interest of the child who is subject to the child support determination is served by deviation from the presumptive amount of child support;

(F) Specify the amount of the noncustodial parent's parenting time as set forth in the order of visitation;

(G) Include a written finding regarding the use of benefits received under Title II of the federal Social Security Act in the calculation of the amount of child support; and

(H) Specify the percentage of uninsured health care expenses for which each parent shall be responsible.

(3) When child support is ordered, the party who is required to pay the child support shall not be liable to third persons for necessities furnished to the child embraced in the judgment or decree.

(4) In all cases, the parties shall submit to the court their worksheets and schedules and the presence or absence of other factors to be considered by the court pursuant to the provisions of this Code section. The child support worksheet and, if there are any deviations, Schedule E shall be attached to the final court order or judgment; provided, however, that any order entered pursuant to Code Section 19-13-4 shall not be required to have such worksheet and schedule attached thereto.

(5) In any case in which the gross income of the custodial parent and the noncustodial parent is determined by a jury, the court shall charge the provisions of this Code section applicable to the determination of gross income. The jury shall be required to return a special interrogatory determining gross income. The court shall determine adjusted income, health insurance costs, and work related child care costs. Based upon the jury's verdict as to gross income, the court shall determine the presumptive amount of child support in accordance with the provisions of this Code section. The court shall inform the jury of the presumptive amount of child support and the identity of the custodial and noncustodial parents. In the final instructions to the jury, the court shall charge the provisions of this Code section applicable to the determination of deviations and the jury shall be required to return a special interrogatory as to deviations and the final award of child support. The court shall include its findings and the jury's verdict on the child support worksheet in accordance with this Code section and Code Section 19-5-12.

(6) Nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement contrary to the presumptive amount of child support which may be made the order of

the court pursuant to review by the court of the adequacy of the child support amounts negotiated by the parties, including the provision for medical expenses and health insurance; provided, however, that if the agreement negotiated by the parties does not comply with the provisions contained in this Code section and does not contain findings of fact as required to support a deviation, the court shall reject such agreement.

(7) In any case filed pursuant to Chapter 11 of this title, relating to the "Child Support Recovery Act," the "Uniform Reciprocal Enforcement of Support Act," or the "Uniform Interstate Family Support Act," the court shall make all determinations of fact, including gross income and deviations, and a jury shall not hear any issue related to such cases.

(d) **Nature of guidelines; court's discretion.** In the event of a hearing or trial on the issue of child support, the guidelines enumerated in this Code section are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of the hearing or trial.

(e) **Duration of child support responsibility.** The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary, final, or modified order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for child support provided in this subsection may be enforced by either parent, by any nonparent custodian, by a guardian appointed to receive child support for the child for whose benefit the child support is ordered, or by the child for whose benefit the child support is ordered.

(f) **Gross income.**

(1) **Inclusion to gross income.**

(A) **Attributable income.** Gross income of each parent shall be determined in the process of setting the presumptive amount of child support and shall include all income from any source, before deductions for taxes and other deductions such as preexisting

orders for child support and credits for other qualified children, whether earned or unearned, and includes, but is not limited to, the following:

- (i) Salaries;
- (ii) Commissions, fees, and tips;
- (iii) Income from self-employment;
- (iv) Bonuses;
- (v) Overtime payments;
- (vi) Severance pay;
- (vii) Recurring income from pensions or retirement plans including, but not limited to, United States Department of Veterans Affairs, Railroad Retirement Board, Keoghs, and individual retirement accounts;
- (viii) Interest income;
- (ix) Dividend income;
- (x) Trust income;
- (xi) Income from annuities;
- (xii) Capital gains;
- (xiii) Disability or retirement benefits that are received from the Social Security Administration pursuant to Title II of the federal Social Security Act;
- (xiv) Workers' compensation benefits, whether temporary or permanent;
- (xv) Unemployment insurance benefits;
- (xvi) Judgments recovered for personal injuries and awards from other civil actions;
- (xvii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;
- (xviii) Prizes;
- (xix) Lottery winnings;
- (xx) Alimony or maintenance received from persons other than parties to the proceeding before the court;
- (xxi) Assets which are used for the support of the family; and
- (xxii) Other income.

**(B) Self-employment income.** Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income. Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary and reasonable expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

- (i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or costs of operation of home offices; or
- (ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court or the jury to be inappropriate for determining gross income.

In general, income and expenses from self-employment or operation of a business should be carefully reviewed by the court or the jury to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.

**(C) Fringe benefits.** Fringe benefits for inclusion as income or "in kind" remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if the benefits significantly reduce personal living expenses. Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board. Fringe benefits shall not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including, but not limited to, employer paid portions of health insurance premiums or employer contributions to a retirement or pension plan.

**(D) Variable income.** Variable income such as commissions, bonuses, overtime pay, military bonuses, and dividends shall be averaged by the court or the jury over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income. When income is received on an irregular, nonrecurring, or one-time basis, the court or the jury may, but is not required to, average or prorate

the income over a reasonable specified period of time or require the parent to pay as a one-time support amount a percentage of his or her nonrecurring income, taking into consideration the percentage of recurring income of that parent.

**(E) Military compensation and allowances.** Income for a parent who is an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the merchant marine of the United States, the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, the National Guard, or the Air National Guard shall include:

- (i) Base pay;
- (ii) Drill pay;
- (iii) Basic allowance for subsistence, whether paid directly to the parent or received in-kind; and
- (iv) Basic allowance for housing, whether paid directly to the parent or received in-kind, determined at the parent's pay grade at the without dependent rate, but shall include only so much of the allowance that is not attributable to area variable housing costs.

Except as determined by the court or jury, special pay or incentive pay, allowances for clothing or family separation, and reimbursed expenses related to the parent's assignment to a high cost of living location shall not be considered income for the purpose of determining gross income.

**(2) Exclusions from gross income.** Excluded from gross income are the following:

- (A) Child support payments received by either parent for the benefit of a child of another relationship;
- (B) Benefits received from means-tested public assistance programs such as, but not limited to:
  - (i) PeachCare for Kids Program, Temporary Assistance for Needy Families Program, or similar programs in other states or territories under Title IV-A of the federal Social Security Act;
  - (ii) Food stamps or the value of food assistance provided by way of electronic benefits transfer procedures by the Department of Human Services;
  - (iii) Supplemental security income received under Title XVI of the federal Social Security Act;

- (iv) Benefits received under Section 402(d) of the federal Social Security Act for disabled adult children of deceased disabled workers; and
- (v) Low-income heating and energy assistance program payments;

(C) Foster care payments paid by the Department of Human Services or a licensed child placing agency for providing foster care to a foster child in the custody of the Department of Human Services; and

(D) A nonparent custodian's gross income.

(3) **Social Security benefits.**

- (A) Benefits received under Title II of the federal Social Security Act by a child on the obligor's account shall be counted as child support payments and shall be applied against the final child support order to be paid by the obligor for the child.
- (B) After calculating the obligor's monthly gross income, including the countable social security benefits as specified in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support, if the presumptive amount of child support, as increased or decreased by deviations, is greater than the social security benefits paid on behalf of the child on the obligor's account, the obligor shall be required to pay the amount exceeding the social security benefit as part of the final child support order in the case.
- (C) After calculating the obligor's monthly gross income, including the countable social security benefits as specified in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support, if the presumptive amount of child support, as increased or decreased by deviations, is equal to or less than the social security benefits paid to the nonparent custodian or custodial parent on behalf of the child on the obligor's account, the child support responsibility of that parent shall have been met and no further child support shall be paid.
- (D) Any benefit amounts under Title II of the federal Social Security Act as determined by the Social Security Administration sent to the nonparent custodian or custodial parent by the Social Security Administration for the child's benefit which are greater than the final child support order shall be retained by the nonparent custodian or custodial parent for the child's benefit and shall not be used as a reason for decreasing the final child support order or reducing arrearages.

**(4) Reliable evidence of income.**

**(A) Imputed income.** When establishing the amount of child support, if a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or the jury has no other reliable evidence of the parent's income or income potential, gross income for the current year shall be determined by imputing gross income based on a 40 hour workweek at minimum wage.

**(B) Modification.** When cases with established orders are reviewed for modification and a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or jury has no other reliable evidence of such parent's income or income potential, the court or jury may increase the child support of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of such parent's gross income for each year since the final child support order was entered or last modified and shall calculate the basic child support obligation using the increased amount as such parent's gross income.

**(C) Rehearing.** If income is imputed pursuant to subparagraph (A) of this paragraph, the party believing the income of the other party is higher than the amount imputed may provide within 90 days, upon motion to the court, evidence necessary to determine the appropriate amount of child support based upon reliable evidence. A hearing shall be scheduled after the motion is filed. The court may increase, decrease, or leave unchanged the amount of current child support from the date of filing of either parent's initial filing or motion for reconsideration. While the motion for reconsideration is pending, the obligor shall be responsible for the amount of child support originally ordered. Arrearages entered in the original child support order based upon imputed income shall not be forgiven. When there is reliable evidence to support a motion for reconsideration of the amount of income imputed, the party shall not be required to demonstrate that there has been a substantial change in either parent's income, financial status, the needs of the child, or other such factors required for modification of an order pursuant to subsection (k) of this Code section.

**(D) Willful or voluntary unemployment or underemployment.** In determining whether a parent is willfully or voluntarily unemployed or underemployed, the court or the jury shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's responsibil-

ity to support his or her child and whether such choices benefit the child. A determination of willful or voluntary unemployment or underemployment shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support but can be based on any intentional choice or act that affects a parent's income. In determining willful or voluntary unemployment or underemployment, the court may examine whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the court to consider when determining willful or voluntary unemployment or underemployment include, but are not limited to:

- (i) The parent's past and present employment;
- (ii) The parent's education and training;
- (iii) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's responsibility to support his or her child and, to this end, whether the training or education may ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future;
- (iv) A parent's ownership of valuable assets and resources, such as an expensive home or automobile, that appear inappropriate or unreasonable for the income claimed by the parent;
- (v) The parent's own health and ability to work outside the home; and
- (vi) The parent's role as caretaker of a child of that parent, a disabled or seriously ill child of that parent, or a disabled or seriously ill adult child of that parent, or any other disabled or seriously ill relative for whom that parent has assumed the role of caretaker, which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in the role of caretaker in the future. When considering the income potential of a parent whose work experience is limited due to the caretaker role of that parent, the court shall consider the following factors:
  - (I) Whether the parent acted in the role of full-time caretaker immediately prior to separation by the married parties or prior to the divorce or annulment of the marriage or dissolution of another relationship in which the parent was a full-time caretaker;
  - (II) The length of time the parent staying at home has remained out of the work force for this purpose;

(III) The parent's education, training, and ability to work; and

(IV) Whether the parent is caring for a child who is four years of age or younger. If the court or the jury determines that a parent is willfully or voluntarily unemployed or underemployed, child support shall be calculated based on a determination of earning capacity, as evidenced by educational level or previous work experience. In the absence of any other reliable evidence, income may be imputed to the parent pursuant to a determination that gross income for the current year is based on a 40 hour workweek at minimum wage.

A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard or other armed forces unit or enlists or is drafted for full-time service in the armed forces of the United States.

**(5) Adjustments to gross income.**

**(A) Self-employment.** One-half of the self-employment and Medicare taxes shall be calculated as follows:

(i) Six and one-quarter percent of self-employment income up to the maximum amount to which federal old age, survivors, and disability insurance (OASDI) applies; plus

(ii) One and forty-five one-hundredths of a percent of self-employment income for Medicare

and this amount shall be deducted from a self-employed parent's monthly gross income.

**(B) Preexisting orders.** An adjustment to the parent's monthly gross income shall be made on the Child Support Schedule B — Adjusted Income for current preexisting orders actually being paid under an order of support for a period of not less than 12 months immediately prior to the date of the hearing or such period that an order has been in effect if less than 12 months prior to the date of the hearing before the court to set, modify, or enforce child support.

(i) In calculating the adjustment for preexisting orders, the court shall include only those preexisting orders where the date of filing with the clerk of court of the initial support order precedes the date of filing with the clerk of court of the initial order in the case immediately under consideration;

(ii) The priority for preexisting orders shall be determined by the date of filing with the clerk of court of the initial order in each case. Subsequent modifications of the initial support order shall

not affect the priority position established by the date of the initial order. In any modification proceeding, the court rendering the decision shall make a specific finding of the date of the initial order of the case;

(iii) Adjustments shall be allowed for current preexisting support only to the extent that the payments are actually being paid as evidenced by documentation including, but not limited to, payment history from a court clerk, a IV-D agency, as defined in Code Section 19-6-31, the child support services' computer data base, the child support payment history, or canceled checks or other written proof of payments paid directly to the other parent. The maximum credit allowed for a preexisting order is an average of the amount of current support actually paid under the preexisting order over the past 12 months prior to the hearing date;

(iv) All preexisting orders shall be entered on the Child Support Schedule B — Adjusted Income for the purpose of calculating the total amount of the credit to be included on the child support worksheet; and

(v) Payments being made by a parent on any arrearages shall not be considered payments on preexisting orders or subsequent orders and shall not be used as a basis for reducing gross income.

**(C) Theoretical child support orders.** In addition to the adjustments to monthly gross income for self-employment taxes provided in subparagraph (A) of this paragraph and for preexisting orders provided in subparagraph (B) of this paragraph, credits for either parent's other qualified child living in the parent's home for whom the parent owes a legal duty of support may be considered by the court for the purpose of reducing the parent's gross income. To consider a parent's other qualified children for determining the theoretical child support order, a parent shall present documentary evidence of the parent-child relationship to the court. Adjustments to income pursuant to this subparagraph may be considered in such circumstances in which the failure to consider a qualified child would cause substantial hardship to the parent; provided, however, that such consideration of an adjustment shall be based upon the best interest of the child for whom child support is being awarded. If the court, in its discretion, decides to apply the qualified child adjustment, the basic child support obligation of the parent for the number of other qualified children living with such parent shall be determined based upon that parent's monthly gross income. Except for self-employment taxes paid, no other amounts shall be subtracted from the parent's monthly gross income when calculating a theoretical child support order under this subpara-

graph. The basic child support obligation for such parent shall be multiplied by 75 percent and the resulting amount shall be subtracted from such parent's monthly gross income and entered on the Child Support Schedule B — Adjusted Income.

**(D) Priority of adjustments.** In multiple family situations, the adjustments to a parent's monthly gross income shall be calculated in the following order:

(i) Preexisting orders according to the date of the initial order; and

(ii) After applying the deductions on the Child Support Schedule B — Adjusted Income for preexisting orders, if any, in subparagraph (B) of paragraph (5) of this subsection, any credit for a parent's other qualified children may be considered using the procedure set forth in subparagraph (C) of this paragraph.

**(g) Parenting time deviation.** The court or the jury may deviate from the presumptive amount of child support as set forth in subparagraph (i)(2)(K) of this Code section.

**(h) Adjusted support obligation.** The child support obligation table does not include the cost of the parent's work related child care costs, health insurance premiums, or uninsured health care expenses. The additional expenses for the child's health insurance premiums and work related child care costs shall be included in the calculations to determine child support. A nonparent custodian's expenses for work related child care costs and health insurance premiums shall be taken into account when establishing a final child support order.

**(1) Work related child care costs.**

**(A)** Work related child care costs necessary for the parent's employment, education, or vocational training that are determined by the court to be appropriate, and that are appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together, shall be averaged for a monthly amount and entered on the child support worksheet in the column of the parent initially paying the expense. Work related child care costs of a nonparent custodian shall be considered when determining the amount of this expense.

**(B)** If a child care subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the child care expense actually paid by either parent or a nonparent custodian shall be included in the calculation.

**(C)** If either parent is the provider of child care services to the child for whom support is being determined, the value of those

services shall not be an adjustment to the basic child support obligation when calculating the support award.

(D) If child care is provided without charge to the parent, the value of these services shall not be an adjustment to the basic child support obligation. If child care is or will be provided by a person who is paid for his or her services, proof of actual cost or payment shall be shown to the court before the court includes such payment in its consideration.

(E) The amount of work related child care costs shall be determined and added as an adjustment to the basic child support obligation as "additional expenses" whether paid directly by the parent or through a payroll deduction.

(F) The total amount of work related child care costs shall be divided between the parents pro rata to determine the presumptive amount of child support and shall be included in the worksheet and written order of the court.

**(2) Cost of health insurance premiums.**

(A)(i) The amount that is, or will be, paid by a parent for health insurance for the child for whom support is being determined shall be an adjustment to the basic child support obligation and prorated between the parents based upon their respective incomes. Payments made by a parent's employer for health insurance and not deducted from the parent's wages shall not be included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child shall be added.

(ii) The amount of the cost for the child's health insurance premium shall be determined and added as an adjustment to the basic child support obligation as "additional expenses" whether paid directly by the parent or through a payroll deduction.

(iii) The total amount of the cost for the child's health insurance premium shall be divided between the parents pro rata to determine the total presumptive amount of child support and shall be included in the Child Support Schedule D — Additional Expenses and written order of the court together with the amount of the basic child support obligation.

(B)(i) If either parent has health insurance reasonably available at reasonable cost that provides for the health care needs of the child, then an amount to cover the cost of the premium shall be added as an adjustment to the basic child support obligation. A health insurance premium paid by a nonparent custodian shall be included when determining the amount of health insurance

expense. In determining the amount to be added to the order for the health insurance cost, only the amount of the health insurance cost attributable to the child who is the subject of the order shall be included.

(ii) If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child who is the subject of the current action for support is not verifiable, the total cost to the parent paying the premium shall be prorated by the number of persons covered so that only the cost attributable to the child who is the subject of the order under consideration is included. The amount of health insurance premium shall be determined by dividing the total amount of the insurance premium by the number of persons covered by the insurance policy and multiplying the resulting amount by the number of children covered by the insurance policy. The monthly cost of health insurance premium shall be entered on the Child Support Schedule D — Additional Expenses in the column of the parent paying the premium.

(iii) Eligibility for or enrollment of the child in Medicaid or PeachCare for Kids Program shall not satisfy the requirement that the final child support order provide for the child's health care needs. Health coverage through PeachCare for Kids Program and Medicaid shall not prevent a court from ordering either or both parents to obtain other health insurance.

### **(3) Uninsured health care expenses.**

(A) The child's uninsured health care expenses shall be the financial responsibility of both parents. The final child support order shall include provisions for payment of the uninsured health care expenses; provided, however, that the uninsured health care expenses shall not be used for the purpose of calculating the amount of child support. The parents shall divide the uninsured health care expenses pro rata, unless otherwise specifically ordered by the court.

(B) If a parent fails to pay his or her pro rata share of the child's uninsured health care expenses, as specified in the final child support order, within a reasonable time after receipt of evidence documenting the uninsured portion of the expense:

(i) The other parent or the nonparent custodian may enforce payment of the expense by any means permitted by law; or

(ii) The child support services shall pursue enforcement of payment of such unpaid expenses only if the unpaid expenses have been reduced to a judgment in a sum certain amount.

**(i) Grounds for deviation.**

**(1) General principles.**

(A) The amount of child support established by this Code section and the presumptive amount of child support are rebuttable and the court or the jury may deviate from the presumptive amount of child support in compliance with this subsection. In deviating from the presumptive amount of child support, primary consideration shall be given to the best interest of the child for whom support under this Code section is being determined. A nonparent custodian's expenses may be the basis for a deviation.

(B) When ordering a deviation from the presumptive amount of child support, the court or the jury shall consider all available income of the parents and shall make written findings or special interrogatory findings that an amount of child support other than the amount calculated is reasonably necessary to provide for the needs of the child for whom child support is being determined and the order or special interrogatory shall state:

(i) The reasons for the deviation from the presumptive amount of child support;

(ii) The amount of child support that would have been required under this Code section if the presumptive amount of child support had not been rebutted; and

(iii) How, in its determination:

(I) Application of the presumptive amount of child support would be unjust or inappropriate; and

(II) The best interest of the child for whom support is being determined will be served by deviation from the presumptive amount of child support.

(C) No deviation in the presumptive amount of child support shall be made which seriously impairs the ability of the custodial parent to maintain minimally adequate housing, food, and clothing for the child being supported by the order and to provide other basic necessities, as determined by the court or the jury.

(D) If the circumstances which supported the deviation cease to exist, the final child support order may be modified as set forth in subsection (k) of this Code section to eliminate the deviation.

**(2) Specific deviations.**

(A) **High income.** For purposes of this subparagraph, parents are considered to be high-income parents if their combined adjusted income exceeds \$30,000.00 per month. For high-income

parents, the court shall set the basic child support obligation at the highest amount allowed by the child support obligation table but the court or the jury may consider upward deviation to attain an appropriate award of child support for high-income parents which is consistent with the best interest of the child.

**(B) Low income.**

(i) If the noncustodial parent requests a low-income deviation, such parent shall demonstrate no earning capacity or that his or her pro rata share of the presumptive amount of child support would create an extreme economic hardship for such parent. A noncustodial parent whose sole source of income is supplemental security income received under Title XVI of the federal Social Security Act shall be considered to have no earning capacity.

(ii) In considering a noncustodial parent's request for a low-income deviation, the court or the jury shall examine all attributable and excluded sources of income, assets, and benefits available to the noncustodial parent and may consider all reasonable expenses of the noncustodial parent, ensuring that such expenses are actually paid by the noncustodial parent and are clearly justified expenses.

(iii) In considering a noncustodial parent's request for a low-income deviation, the court or the jury shall then weigh the income and all attributable and excluded sources of income, assets, and benefits and all reasonable expenses of each parent, the relative hardship that a reduction in the amount of child support paid to the custodial parent would have on the custodial parent's household, the needs of each parent, the needs of the child for whom child support is being determined, and the ability of the noncustodial parent to pay child support.

(iv) Following a review of such noncustodial parent's gross income and expenses, and taking into account each parent's adjusted child support obligation and the relative hardships on the parents and the child, the court or the jury may consider a downward deviation to attain an appropriate award of child support which is consistent with the best interest of the child.

(v) For the purpose of calculating a low-income deviation, the noncustodial parent's minimum child support for one child shall be not less than \$100.00 per month, and such amount shall be increased by at least \$50.00 for each additional child for the same case for which child support is being ordered.

(vi) A low-income deviation granted pursuant to this subparagraph shall apply only to the current child support amount and

shall not prohibit an additional amount being ordered to reduce a noncustodial parent's arrears.

(vii) If a low-income deviation is granted pursuant to this subparagraph, such deviation shall not prohibit the court or jury from granting an increase or decrease to the presumptive amount of child support by the use of any other specific or nonspecific deviation.

(C) **Other health related insurance.** If the court or the jury finds that either parent has vision or dental insurance available at a reasonable cost for the child, the court may deviate from the presumptive amount of child support for the cost of such insurance.

(D) **Life insurance.** In accordance with Code Section 19-6-34, if the court or the jury finds that either parent has purchased life insurance on the life of either parent or the lives of both parents for the benefit of the child, the court may deviate from the presumptive amount of child support for the cost of such insurance by either adding or subtracting the amount of the premium.

(E) **Child and dependent care tax credit.** If the court or the jury finds that one of the parents is entitled to the Child and Dependent Care Tax Credit, the court or the jury may deviate from the presumptive amount of child support in consideration of such credit.

(F) **Travel expenses.** If court ordered visitation related travel expenses are substantial due to the distance between the parents, the court may order the allocation of such costs or the jury may by a finding in its special interrogatory allocate such costs by deviation from the presumptive amount of child support, taking into consideration the circumstances of the respective parents as well as which parent moved and the reason for such move.

(G) **Alimony.** Actual payments of alimony shall not be considered as a deduction from gross income but may be considered as a deviation from the presumptive amount of child support. If the court or the jury considers the actual payment of alimony, the court shall make a written finding of such consideration or the jury, in its special interrogatory, shall make a written finding of such consideration as a basis for deviation from the presumptive amount of child support.

(H) **Mortgage.** If the noncustodial parent is providing shelter, such as paying the mortgage of the home, or has provided a home at no cost to the custodial parent in which the child resides, the court or the jury may allocate such costs or an amount equivalent to such costs by deviation from the presumptive amount of child

support, taking into consideration the circumstances of the respective parents and the best interest of the child.

(I) **Permanency plan or foster care plan.** In cases where the child is in the legal custody of the Department of Human Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or the jury may consider a deviation from the presumptive amount of child support if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent or parents and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

(J) **Extraordinary expenses.** The child support obligation table includes average child rearing expenditures for families given the parents' combined adjusted income and number of children. Extraordinary expenses are in excess of average amounts estimated in the child support obligation table and are highly variable among families. Extraordinary expenses shall be considered on a case-by-case basis in the calculation of support and may form the basis for deviation from the presumptive amount of child support so that the actual amount of the expense is considered in the calculation of the final child support order for only those families actually incurring the expense. Extraordinary expenses shall be prorated between the parents by assigning or deducting credit for actual payments for extraordinary expenses.

(i) **Extraordinary educational expenses.** Extraordinary educational expenses may be a basis for deviation from the presumptive amount of child support. Extraordinary educational expenses include, but are not limited to, tuition, room and board, lab fees, books, fees, and other reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling that are appropriate to the parent's financial abilities and to the lifestyle of the child if the parents and the child were living together.

(I) In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered; and

(II) If a deviation is allowed for extraordinary educational expenses, a monthly average of the extraordinary educational expenses shall be based on evidence of prior or anticipated expenses and entered on the Child Support Schedule E — Deviations.

(ii) **Special expenses incurred for child rearing.** Special expenses incurred for child rearing, including, but not limited to, quantifiable expense variations related to the food, clothing, and hygiene costs of children at different age levels, may be a basis for a deviation from the presumptive amount of child support. Such expenses include, but are not limited to, summer camp; music or art lessons; travel; school sponsored extracurricular activities, such as band, clubs, and athletics; and other activities intended to enhance the athletic, social, or cultural development of a child but not otherwise required to be used in calculating the presumptive amount of child support as are health insurance premiums and work related child care costs. A portion of the basic child support obligation is intended to cover average amounts of special expenses incurred in the rearing of a child. In order to determine if a deviation for special expenses is warranted, the court or the jury shall consider the full amount of the special expenses as described in this division; and when these special expenses exceed 7 percent of the basic child support obligation, then the additional amount of special expenses shall be considered as a deviation to cover the full amount of the special expenses.

(iii) **Extraordinary medical expenses.** In instances of extreme economic hardship involving extraordinary medical expenses not covered by insurance, the court or the jury may consider a deviation from the presumptive amount of child support for extraordinary medical expenses. Such expenses may include, but are not limited to, extraordinary medical expenses of the child or a parent of the child; provided, however, that any such deviation:

- (I) Shall not act to leave a child unsupported; and
- (II) May be ordered for a specific period of time measured in months.

When extraordinary medical expenses are claimed, the court or the jury shall consider the resources available for meeting such needs, including sources available from agencies and other adults.

**(K) Parenting time.**

(i) The child support obligation table is based upon expenditures for a child in intact households. The court may order or the jury may find by special interrogatory a deviation from the presumptive amount of child support when special circumstances make the presumptive amount of child support excessive or inadequate due to extended parenting time as set forth in the

order of visitation or when the child resides with both parents equally.

(ii) If the court or the jury determines that a parenting time deviation is applicable, then such deviation shall be included with all other deviations and be treated as a deduction.

(iii) In accordance with subsection (d) of Code Section 19-11-8, if any action or claim for parenting time or a parenting time deviation is brought under this subparagraph, it shall be an action or claim solely between the custodial parent and the noncustodial parent, and not any third parties, including the child support services.

(3) **Nonspecific deviations.** Deviations from the presumptive amount of child support may be appropriate for reasons in addition to those established under this subsection when the court or the jury finds it is in the best interest of the child.

**(j) Involuntary loss of income.**

(1) In the event a parent suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of child support attributable to lost income shall not accrue from the date of the service of the petition for modification, provided that service is made on the other parent. It shall not be considered an involuntary termination of employment if the parent has left the employer without good cause in connection with the parent's most recent work.

(2) In the event a modification action is filed pursuant to this subsection, the court shall make every effort to expedite hearing such action.

(3) The court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

**(k) Modification.**

(1) Except as provided in paragraph (2) of this subsection, a parent shall not have the right to petition for modification of the child support award regardless of the length of time since the establishment of the child support award unless there is a substantial change in either parent's income and financial status or the needs of the child.

(2) No petition to modify child support may be filed by either parent within a period of two years from the date of the final order on a previous petition to modify by the same parent except where:

(A) A noncustodial parent has failed to exercise the court ordered visitation;

(B) A noncustodial parent has exercised a greater amount of visitation than was provided in the court order; or

(C) The motion to modify is based upon an involuntary loss of income as set forth in subsection (j) of this Code section.

(3)(A) If there is a difference of at least 15 percent but less than 30 percent between a new award and a Georgia child support order entered prior to January 1, 2007, the court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(B) If there is a difference of 30 percent or more between a new award and a Georgia child support order entered prior to January 1, 2007, the court may, at its discretion, phase in the new child support award over a period of up to two years with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(C) All IV-D case reviews and modifications shall proceed and be governed by Code Section 19-11-12. Subsequent changes to the child support obligation table shall be a reason to request a review for modification from the IV-D agency to the extent that such changes are consistent with the requirements of Code Section 19-11-12.

(4) A petition for modification shall be filed under the same rules of procedure applicable to divorce proceedings. The court may allow, upon motion, the temporary modification of a child support order pending the final trial on the petition. An order granting temporary modification shall be subject to revision by the court at any time before the final trial. A jury may be demanded on a petition for modification but the jury shall only be responsible for determining a parent's gross income and any deviations. In the hearing upon a petition for modification, testimony may be given and evidence introduced relative to the change of circumstances, income and financial status of either parent, or in the needs of the child. After

hearing both parties and the evidence, the court may modify and revise the previous judgment, in accordance with the changed circumstances, income and financial status of either parent, or in the needs of the child, if such change or changes are satisfactorily proven so as to warrant the modification and revision and such modification and revisions are in the child's best interest. The court shall enter a written order specifying the basis for the modification, if any, and shall include all of the information set forth in paragraph (2) of subsection (c) of this Code section.

(5) In proceedings for the modification of a child support award pursuant to the provisions of this Code section, the court may award attorney's fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require. Where a custodial parent prevails in an upward modification of child support based upon the noncustodial parent's failure to be available and willing to exercise court ordered visitation, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to the custodial parent.

(l) **Split parenting.** In cases of split parenting, a worksheet shall be prepared separately for the child for whom the father is the custodial parent and for the child for whom the mother is the custodial parent, and that worksheet shall be filed with the clerk of court. For each split parenting custodial situation, the court shall determine:

- (1) Which parent is the obligor;
- (2) The presumptive amount of child support;
- (3) The actual award of child support, if different from the presumptive amount of child support;
- (4) How and when the sum certain amount of child support owed shall be paid; and
- (5) Any other child support responsibilities for each parent.

(m) **Worksheets.**

(1) The child support worksheet shall be used to record information necessary to determine and calculate child support. Schedules and worksheets shall be prepared by the parties for purposes of calculating the amount of child support. Information from the schedules shall be entered on the child support worksheet. The child support worksheet and, if there are any deviations, Schedule E shall be attached to the final court order or judgment; provided, however, that any order entered pursuant to Code Section 19-13-4 shall not be required to have such worksheet and schedule attached thereto.

(2) The child support worksheet and schedules shall be promulgated by the Georgia Child Support Commission.

(n) **Child support obligation table.** The child support obligation table shall be proposed by the Georgia Child Support Commission and shall be as codified in subsection (o) of this Code section.

(o) **Georgia Schedule of Basic Child Support Obligations.**

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
\$ 800.00	\$ 197.00	\$ 283.00	\$ 330.00	\$ 367.00	\$ 404.00	\$ 440.00
850.00	208.00	298.00	347.00	387.00	425.00	463.00
900.00	218.00	313.00	364.00	406.00	447.00	486.00
950.00	229.00	328.00	381.00	425.00	468.00	509.00
1,000.00	239.00	343.00	398.00	444.00	489.00	532.00
1,050.00	250.00	357.00	415.00	463.00	510.00	554.00
1,100.00	260.00	372.00	432.00	482.00	530.00	577.00
1,150.00	270.00	387.00	449.00	501.00	551.00	600.00
1,200.00	280.00	401.00	466.00	520.00	572.00	622.00
1,250.00	291.00	416.00	483.00	539.00	593.00	645.00
1,300.00	301.00	431.00	500.00	558.00	614.00	668.00
1,350.00	311.00	445.00	517.00	577.00	634.00	690.00
1,400.00	321.00	459.00	533.00	594.00	654.00	711.00
1,450.00	331.00	473.00	549.00	612.00	673.00	733.00
1,500.00	340.00	487.00	565.00	630.00	693.00	754.00
1,550.00	350.00	500.00	581.00	647.00	712.00	775.00
1,600.00	360.00	514.00	597.00	665.00	732.00	796.00
1,650.00	369.00	528.00	612.00	683.00	751.00	817.00
1,700.00	379.00	542.00	628.00	701.00	771.00	838.00
1,750.00	389.00	555.00	644.00	718.00	790.00	860.00
1,800.00	398.00	569.00	660.00	736.00	809.00	881.00
1,850.00	408.00	583.00	676.00	754.00	829.00	902.00
1,900.00	418.00	596.00	692.00	771.00	848.00	923.00
1,950.00	427.00	610.00	708.00	789.00	868.00	944.00
2,000.00	437.00	624.00	723.00	807.00	887.00	965.00
2,050.00	446.00	637.00	739.00	824.00	906.00	986.00
2,100.00	455.00	650.00	754.00	840.00	924.00	1,006.00
2,150.00	465.00	663.00	769.00	857.00	943.00	1,026.00
2,200.00	474.00	676.00	783.00	873.00	961.00	1,045.00
2,250.00	483.00	688.00	798.00	890.00	979.00	1,065.00
2,300.00	492.00	701.00	813.00	907.00	997.00	1,085.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
2,350.00	501.00	714.00	828.00	923.00	1,016.00	1,105.00
2,400.00	510.00	727.00	843.00	940.00	1,034.00	1,125.00
2,450.00	519.00	740.00	858.00	956.00	1,052.00	1,145.00
2,500.00	528.00	752.00	873.00	973.00	1,070.00	1,165.00
2,550.00	537.00	765.00	888.00	990.00	1,089.00	1,184.00
2,600.00	547.00	778.00	902.00	1,006.00	1,107.00	1,204.00
2,650.00	556.00	791.00	917.00	1,023.00	1,125.00	1,224.00
2,700.00	565.00	804.00	932.00	1,039.00	1,143.00	1,244.00
2,750.00	574.00	816.00	947.00	1,056.00	1,162.00	1,264.00
2,800.00	583.00	829.00	962.00	1,073.00	1,180.00	1,284.00
2,850.00	592.00	842.00	977.00	1,089.00	1,198.00	1,303.00
2,900.00	601.00	855.00	992.00	1,106.00	1,216.00	1,323.00
2,950.00	611.00	868.00	1,006.00	1,122.00	1,234.00	1,343.00
3,000.00	620.00	881.00	1,021.00	1,139.00	1,253.00	1,363.00
3,050.00	629.00	893.00	1,036.00	1,155.00	1,271.00	1,383.00
3,100.00	638.00	906.00	1,051.00	1,172.00	1,289.00	1,402.00
3,150.00	647.00	919.00	1,066.00	1,188.00	1,307.00	1,422.00
3,200.00	655.00	930.00	1,079.00	1,203.00	1,323.00	1,440.00
3,250.00	663.00	941.00	1,092.00	1,217.00	1,339.00	1,457.00
3,300.00	671.00	952.00	1,104.00	1,231.00	1,355.00	1,474.00
3,350.00	679.00	963.00	1,117.00	1,246.00	1,370.00	1,491.00
3,400.00	687.00	974.00	1,130.00	1,260.00	1,386.00	1,508.00
3,450.00	694.00	985.00	1,143.00	1,274.00	1,402.00	1,525.00
3,500.00	702.00	996.00	1,155.00	1,288.00	1,417.00	1,542.00
3,550.00	710.00	1,008.00	1,168.00	1,303.00	1,433.00	1,559.00
3,600.00	718.00	1,019.00	1,181.00	1,317.00	1,448.00	1,576.00
3,650.00	726.00	1,030.00	1,194.00	1,331.00	1,464.00	1,593.00
3,700.00	734.00	1,041.00	1,207.00	1,345.00	1,480.00	1,610.00
3,750.00	741.00	1,051.00	1,219.00	1,359.00	1,495.00	1,627.00
3,800.00	749.00	1,062.00	1,231.00	1,373.00	1,510.00	1,643.00
3,850.00	756.00	1,072.00	1,243.00	1,386.00	1,525.00	1,659.00
3,900.00	764.00	1,083.00	1,255.00	1,400.00	1,540.00	1,675.00
3,950.00	771.00	1,093.00	1,267.00	1,413.00	1,555.00	1,691.00
4,000.00	779.00	1,104.00	1,280.00	1,427.00	1,569.00	1,707.00
4,050.00	786.00	1,114.00	1,292.00	1,440.00	1,584.00	1,724.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
4,100.00	794.00	1,125.00	1,304.00	1,454.00	1,599.00	1,740.00
4,150.00	801.00	1,135.00	1,316.00	1,467.00	1,614.00	1,756.00
4,200.00	809.00	1,146.00	1,328.00	1,481.00	1,629.00	1,772.00
4,250.00	816.00	1,156.00	1,340.00	1,494.00	1,643.00	1,788.00
4,300.00	824.00	1,167.00	1,352.00	1,508.00	1,658.00	1,804.00
4,350.00	831.00	1,177.00	1,364.00	1,521.00	1,673.00	1,820.00
4,400.00	839.00	1,188.00	1,376.00	1,534.00	1,688.00	1,836.00
4,450.00	846.00	1,198.00	1,388.00	1,548.00	1,703.00	1,853.00
4,500.00	853.00	1,209.00	1,400.00	1,561.00	1,718.00	1,869.00
4,550.00	861.00	1,219.00	1,412.00	1,575.00	1,732.00	1,885.00
4,600.00	868.00	1,230.00	1,425.00	1,588.00	1,747.00	1,901.00
4,650.00	876.00	1,240.00	1,437.00	1,602.00	1,762.00	1,917.00
4,700.00	883.00	1,251.00	1,449.00	1,615.00	1,777.00	1,933.00
4,750.00	891.00	1,261.00	1,461.00	1,629.00	1,792.00	1,949.00
4,800.00	898.00	1,271.00	1,473.00	1,642.00	1,807.00	1,966.00
4,850.00	906.00	1,282.00	1,485.00	1,656.00	1,821.00	1,982.00
4,900.00	911.00	1,289.00	1,493.00	1,664.00	1,831.00	1,992.00
4,950.00	914.00	1,293.00	1,496.00	1,668.00	1,835.00	1,997.00
5,000.00	917.00	1,297.00	1,500.00	1,672.00	1,839.00	2,001.00
5,050.00	921.00	1,300.00	1,503.00	1,676.00	1,844.00	2,006.00
5,100.00	924.00	1,304.00	1,507.00	1,680.00	1,848.00	2,011.00
5,150.00	927.00	1,308.00	1,510.00	1,684.00	1,852.00	2,015.00
5,200.00	930.00	1,312.00	1,514.00	1,688.00	1,857.00	2,020.00
5,250.00	934.00	1,316.00	1,517.00	1,692.00	1,861.00	2,025.00
5,300.00	937.00	1,320.00	1,521.00	1,696.00	1,865.00	2,029.00
5,350.00	940.00	1,323.00	1,524.00	1,700.00	1,870.00	2,034.00
5,400.00	943.00	1,327.00	1,528.00	1,704.00	1,874.00	2,039.00
5,450.00	947.00	1,331.00	1,531.00	1,708.00	1,878.00	2,044.00
5,500.00	950.00	1,335.00	1,535.00	1,711.00	1,883.00	2,048.00
5,550.00	953.00	1,339.00	1,538.00	1,715.00	1,887.00	2,053.00
5,600.00	956.00	1,342.00	1,542.00	1,719.00	1,891.00	2,058.00
5,650.00	960.00	1,347.00	1,546.00	1,724.00	1,896.00	2,063.00
5,700.00	964.00	1,352.00	1,552.00	1,731.00	1,904.00	2,071.00
5,750.00	968.00	1,357.00	1,558.00	1,737.00	1,911.00	2,079.00
5,800.00	971.00	1,363.00	1,564.00	1,744.00	1,918.00	2,087.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
5,850.00	975.00	1,368.00	1,570.00	1,750.00	1,925.00	2,094.00
5,900.00	979.00	1,373.00	1,575.00	1,757.00	1,932.00	2,102.00
5,950.00	983.00	1,379.00	1,581.00	1,763.00	1,939.00	2,110.00
6,000.00	987.00	1,384.00	1,587.00	1,770.00	1,947.00	2,118.00
6,050.00	991.00	1,389.00	1,593.00	1,776.00	1,954.00	2,126.00
6,100.00	995.00	1,394.00	1,599.00	1,783.00	1,961.00	2,133.00
6,150.00	999.00	1,400.00	1,605.00	1,789.00	1,968.00	2,141.00
6,200.00	1,003.00	1,405.00	1,610.00	1,796.00	1,975.00	2,149.00
6,250.00	1,007.00	1,410.00	1,616.00	1,802.00	1,982.00	2,157.00
6,300.00	1,011.00	1,416.00	1,622.00	1,809.00	1,989.00	2,164.00
6,350.00	1,015.00	1,421.00	1,628.00	1,815.00	1,996.00	2,172.00
6,400.00	1,018.00	1,426.00	1,633.00	1,821.00	2,003.00	2,180.00
6,450.00	1,023.00	1,432.00	1,639.00	1,828.00	2,011.00	2,188.00
6,500.00	1,027.00	1,437.00	1,646.00	1,835.00	2,018.00	2,196.00
6,550.00	1,031.00	1,442.00	1,652.00	1,841.00	2,026.00	2,204.00
6,600.00	1,035.00	1,448.00	1,658.00	1,848.00	2,033.00	2,212.00
6,650.00	1,039.00	1,453.00	1,664.00	1,855.00	2,040.00	2,220.00
6,700.00	1,043.00	1,459.00	1,670.00	1,862.00	2,048.00	2,228.00
6,750.00	1,047.00	1,464.00	1,676.00	1,869.00	2,055.00	2,236.00
6,800.00	1,051.00	1,470.00	1,682.00	1,875.00	2,063.00	2,244.00
6,850.00	1,055.00	1,475.00	1,688.00	1,882.00	2,070.00	2,252.00
6,900.00	1,059.00	1,480.00	1,694.00	1,889.00	2,078.00	2,260.00
6,950.00	1,063.00	1,486.00	1,700.00	1,896.00	2,085.00	2,269.00
7,000.00	1,067.00	1,491.00	1,706.00	1,902.00	2,092.00	2,277.00
7,050.00	1,071.00	1,497.00	1,712.00	1,909.00	2,100.00	2,285.00
7,100.00	1,075.00	1,502.00	1,718.00	1,916.00	2,107.00	2,293.00
7,150.00	1,079.00	1,508.00	1,724.00	1,923.00	2,115.00	2,301.00
7,200.00	1,083.00	1,513.00	1,730.00	1,929.00	2,122.00	2,309.00
7,250.00	1,087.00	1,518.00	1,736.00	1,936.00	2,130.00	2,317.00
7,300.00	1,092.00	1,524.00	1,742.00	1,943.00	2,137.00	2,325.00
7,350.00	1,096.00	1,529.00	1,748.00	1,950.00	2,144.00	2,333.00
7,400.00	1,100.00	1,535.00	1,755.00	1,956.00	2,152.00	2,341.00
7,450.00	1,104.00	1,540.00	1,761.00	1,963.00	2,159.00	2,349.00
7,500.00	1,108.00	1,546.00	1,767.00	1,970.00	2,167.00	2,357.00
7,550.00	1,112.00	1,552.00	1,773.00	1,977.00	2,175.00	2,366.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
7,600.00	1,116.00	1,556.00	1,778.00	1,983.00	2,181.00	2,373.00
7,650.00	1,117.00	1,557.00	1,779.00	1,984.00	2,182.00	2,375.00
7,700.00	1,118.00	1,559.00	1,781.00	1,986.00	2,184.00	2,376.00
7,750.00	1,119.00	1,560.00	1,782.00	1,987.00	2,186.00	2,378.00
7,800.00	1,120.00	1,562.00	1,784.00	1,989.00	2,188.00	2,380.00
7,850.00	1,122.00	1,563.00	1,785.00	1,990.00	2,189.00	2,382.00
7,900.00	1,123.00	1,565.00	1,786.00	1,992.00	2,191.00	2,384.00
7,950.00	1,124.00	1,566.00	1,788.00	1,993.00	2,193.00	2,386.00
8,000.00	1,125.00	1,567.00	1,789.00	1,995.00	2,194.00	2,387.00
8,050.00	1,127.00	1,569.00	1,790.00	1,996.00	2,196.00	2,389.00
8,100.00	1,128.00	1,570.00	1,792.00	1,998.00	2,198.00	2,391.00
8,150.00	1,129.00	1,572.00	1,793.00	1,999.00	2,199.00	2,393.00
8,200.00	1,130.00	1,573.00	1,795.00	2,001.00	2,201.00	2,395.00
8,250.00	1,131.00	1,575.00	1,796.00	2,003.00	2,203.00	2,397.00
8,300.00	1,133.00	1,576.00	1,797.00	2,004.00	2,204.00	2,398.00
8,350.00	1,134.00	1,578.00	1,799.00	2,006.00	2,206.00	2,400.00
8,400.00	1,135.00	1,579.00	1,800.00	2,007.00	2,208.00	2,402.00
8,450.00	1,136.00	1,580.00	1,802.00	2,009.00	2,210.00	2,404.00
8,500.00	1,138.00	1,582.00	1,803.00	2,010.00	2,211.00	2,406.00
8,550.00	1,139.00	1,583.00	1,804.00	2,012.00	2,213.00	2,408.00
8,600.00	1,140.00	1,585.00	1,806.00	2,013.00	2,215.00	2,410.00
8,650.00	1,141.00	1,586.00	1,807.00	2,015.00	2,216.00	2,411.00
8,700.00	1,142.00	1,588.00	1,808.00	2,016.00	2,218.00	2,413.00
8,750.00	1,144.00	1,589.00	1,810.00	2,018.00	2,220.00	2,415.00
8,800.00	1,145.00	1,591.00	1,811.00	2,019.00	2,221.00	2,417.00
8,850.00	1,146.00	1,592.00	1,813.00	2,021.00	2,223.00	2,419.00
8,900.00	1,147.00	1,593.00	1,814.00	2,023.00	2,225.00	2,421.00
8,950.00	1,149.00	1,595.00	1,815.00	2,024.00	2,226.00	2,422.00
9,000.00	1,150.00	1,596.00	1,817.00	2,026.00	2,228.00	2,424.00
9,050.00	1,153.00	1,601.00	1,822.00	2,032.00	2,235.00	2,431.00
9,100.00	1,159.00	1,609.00	1,831.00	2,042.00	2,246.00	2,443.00
9,150.00	1,164.00	1,617.00	1,840.00	2,052.00	2,257.00	2,455.00
9,200.00	1,170.00	1,624.00	1,849.00	2,062.00	2,268.00	2,467.00
9,250.00	1,175.00	1,632.00	1,858.00	2,071.00	2,279.00	2,479.00
9,300.00	1,181.00	1,640.00	1,867.00	2,081.00	2,290.00	2,491.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
9,350.00	1,187.00	1,648.00	1,876.00	2,091.00	2,301.00	2,503.00
9,400.00	1,192.00	1,656.00	1,885.00	2,101.00	2,311.00	2,515.00
9,450.00	1,198.00	1,663.00	1,894.00	2,111.00	2,322.00	2,527.00
9,500.00	1,203.00	1,671.00	1,902.00	2,121.00	2,333.00	2,539.00
9,550.00	1,209.00	1,679.00	1,911.00	2,131.00	2,344.00	2,551.00
9,600.00	1,214.00	1,687.00	1,920.00	2,141.00	2,355.00	2,563.00
9,650.00	1,220.00	1,694.00	1,929.00	2,151.00	2,366.00	2,574.00
9,700.00	1,226.00	1,702.00	1,938.00	2,161.00	2,377.00	2,586.00
9,750.00	1,231.00	1,710.00	1,947.00	2,171.00	2,388.00	2,598.00
9,800.00	1,237.00	1,718.00	1,956.00	2,181.00	2,399.00	2,610.00
9,850.00	1,242.00	1,725.00	1,965.00	2,191.00	2,410.00	2,622.00
9,900.00	1,248.00	1,733.00	1,974.00	2,201.00	2,421.00	2,634.00
9,950.00	1,253.00	1,741.00	1,983.00	2,211.00	2,432.00	2,646.00
10,000.00	1,259.00	1,749.00	1,992.00	2,221.00	2,443.00	2,658.00
10,050.00	1,264.00	1,757.00	2,001.00	2,231.00	2,454.00	2,670.00
10,100.00	1,270.00	1,764.00	2,010.00	2,241.00	2,465.00	2,682.00
10,150.00	1,276.00	1,772.00	2,019.00	2,251.00	2,476.00	2,694.00
10,200.00	1,281.00	1,780.00	2,028.00	2,261.00	2,487.00	2,706.00
10,250.00	1,287.00	1,788.00	2,036.00	2,271.00	2,498.00	2,718.00
10,300.00	1,292.00	1,795.00	2,045.00	2,281.00	2,509.00	2,729.00
10,350.00	1,298.00	1,803.00	2,054.00	2,291.00	2,520.00	2,741.00
10,400.00	1,303.00	1,811.00	2,063.00	2,301.00	2,531.00	2,753.00
10,450.00	1,309.00	1,819.00	2,072.00	2,311.00	2,542.00	2,765.00
10,500.00	1,313.00	1,825.00	2,079.00	2,318.00	2,550.00	2,774.00
10,550.00	1,317.00	1,830.00	2,085.00	2,325.00	2,557.00	2,782.00
10,600.00	1,321.00	1,835.00	2,091.00	2,331.00	2,564.00	2,790.00
10,650.00	1,325.00	1,841.00	2,096.00	2,338.00	2,571.00	2,798.00
10,700.00	1,329.00	1,846.00	2,102.00	2,344.00	2,578.00	2,805.00
10,750.00	1,332.00	1,851.00	2,108.00	2,351.00	2,586.00	2,813.00
10,800.00	1,336.00	1,856.00	2,114.00	2,357.00	2,593.00	2,821.00
10,850.00	1,340.00	1,862.00	2,120.00	2,364.00	2,600.00	2,829.00
10,900.00	1,344.00	1,867.00	2,126.00	2,370.00	2,607.00	2,836.00
10,950.00	1,348.00	1,872.00	2,131.00	2,377.00	2,614.00	2,844.00
11,000.00	1,351.00	1,877.00	2,137.00	2,383.00	2,621.00	2,852.00
11,050.00	1,355.00	1,883.00	2,143.00	2,390.00	2,628.00	2,860.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
11,100.00	1,359.00	1,888.00	2,149.00	2,396.00	2,636.00	2,868.00
11,150.00	1,363.00	1,893.00	2,155.00	2,403.00	2,643.00	2,875.00
11,200.00	1,367.00	1,898.00	2,161.00	2,409.00	2,650.00	2,883.00
11,250.00	1,371.00	1,904.00	2,166.00	2,415.00	2,657.00	2,891.00
11,300.00	1,374.00	1,909.00	2,172.00	2,422.00	2,664.00	2,899.00
11,350.00	1,378.00	1,914.00	2,178.00	2,428.00	2,671.00	2,906.00
11,400.00	1,382.00	1,919.00	2,184.00	2,435.00	2,678.00	2,914.00
11,450.00	1,386.00	1,925.00	2,190.00	2,441.00	2,686.00	2,922.00
11,500.00	1,390.00	1,930.00	2,195.00	2,448.00	2,693.00	2,930.00
11,550.00	1,394.00	1,935.00	2,201.00	2,454.00	2,700.00	2,938.00
11,600.00	1,397.00	1,940.00	2,207.00	2,461.00	2,707.00	2,945.00
11,650.00	1,401.00	1,946.00	2,213.00	2,467.00	2,714.00	2,953.00
11,700.00	1,405.00	1,951.00	2,219.00	2,474.00	2,721.00	2,961.00
11,750.00	1,409.00	1,956.00	2,225.00	2,480.00	2,728.00	2,969.00
11,800.00	1,413.00	1,961.00	2,230.00	2,487.00	2,736.00	2,976.00
11,850.00	1,417.00	1,967.00	2,236.00	2,493.00	2,743.00	2,984.00
11,900.00	1,420.00	1,972.00	2,242.00	2,500.00	2,750.00	2,992.00
11,950.00	1,424.00	1,977.00	2,248.00	2,506.00	2,757.00	3,000.00
12,000.00	1,428.00	1,982.00	2,254.00	2,513.00	2,764.00	3,007.00
12,050.00	1,432.00	1,988.00	2,260.00	2,519.00	2,771.00	3,015.00
12,100.00	1,436.00	1,993.00	2,265.00	2,526.00	2,779.00	3,023.00
12,150.00	1,439.00	1,998.00	2,271.00	2,532.00	2,786.00	3,031.00
12,200.00	1,443.00	2,003.00	2,277.00	2,539.00	2,793.00	3,039.00
12,250.00	1,447.00	2,009.00	2,283.00	2,545.00	2,800.00	3,046.00
12,300.00	1,451.00	2,014.00	2,289.00	2,552.00	2,807.00	3,054.00
12,350.00	1,455.00	2,019.00	2,295.00	2,558.00	2,814.00	3,062.00
12,400.00	1,459.00	2,024.00	2,300.00	2,565.00	2,821.00	3,070.00
12,450.00	1,462.00	2,030.00	2,306.00	2,571.00	2,829.00	3,077.00
12,500.00	1,466.00	2,035.00	2,312.00	2,578.00	2,836.00	3,085.00
12,550.00	1,470.00	2,040.00	2,318.00	2,584.00	2,843.00	3,093.00
12,600.00	1,474.00	2,045.00	2,324.00	2,591.00	2,850.00	3,101.00
12,650.00	1,477.00	2,050.00	2,329.00	2,597.00	2,857.00	3,108.00
12,700.00	1,481.00	2,055.00	2,335.00	2,603.00	2,863.00	3,115.00
12,750.00	1,484.00	2,060.00	2,340.00	2,609.00	2,870.00	3,123.00
12,800.00	1,487.00	2,064.00	2,345.00	2,615.00	2,877.00	3,130.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
12,850.00	1,491.00	2,069.00	2,351.00	2,621.00	2,883.00	3,137.00
12,900.00	1,494.00	2,074.00	2,356.00	2,627.00	2,890.00	3,144.00
12,950.00	1,497.00	2,078.00	2,361.00	2,633.00	2,896.00	3,151.00
13,000.00	1,501.00	2,083.00	2,367.00	2,639.00	2,903.00	3,158.00
13,050.00	1,504.00	2,087.00	2,372.00	2,645.00	2,909.00	3,165.00
13,100.00	1,507.00	2,092.00	2,377.00	2,651.00	2,916.00	3,172.00
13,150.00	1,510.00	2,097.00	2,383.00	2,657.00	2,922.00	3,180.00
13,200.00	1,514.00	2,101.00	2,388.00	2,663.00	2,929.00	3,187.00
13,250.00	1,517.00	2,106.00	2,393.00	2,668.00	2,935.00	3,193.00
13,300.00	1,520.00	2,110.00	2,398.00	2,674.00	2,941.00	3,200.00
13,350.00	1,523.00	2,114.00	2,403.00	2,679.00	2,947.00	3,206.00
13,400.00	1,526.00	2,118.00	2,408.00	2,685.00	2,953.00	3,213.00
13,450.00	1,529.00	2,123.00	2,413.00	2,690.00	2,959.00	3,220.00
13,500.00	1,532.00	2,127.00	2,418.00	2,696.00	2,965.00	3,226.00
13,550.00	1,535.00	2,131.00	2,423.00	2,701.00	2,971.00	3,233.00
13,600.00	1,538.00	2,136.00	2,428.00	2,707.00	2,977.00	3,239.00
13,650.00	1,541.00	2,140.00	2,432.00	2,712.00	2,983.00	3,246.00
13,700.00	1,544.00	2,144.00	2,437.00	2,718.00	2,989.00	3,253.00
13,750.00	1,547.00	2,148.00	2,442.00	2,723.00	2,996.00	3,259.00
13,800.00	1,550.00	2,153.00	2,447.00	2,729.00	3,002.00	3,266.00
13,850.00	1,553.00	2,157.00	2,452.00	2,734.00	3,008.00	3,272.00
13,900.00	1,556.00	2,161.00	2,457.00	2,740.00	3,014.00	3,279.00
13,950.00	1,559.00	2,166.00	2,462.00	2,745.00	3,020.00	3,285.00
14,000.00	1,562.00	2,170.00	2,467.00	2,751.00	3,026.00	3,292.00
14,050.00	1,565.00	2,174.00	2,472.00	2,756.00	3,032.00	3,299.00
14,100.00	1,568.00	2,178.00	2,477.00	2,762.00	3,038.00	3,305.00
14,150.00	1,571.00	2,183.00	2,482.00	2,767.00	3,044.00	3,312.00
14,200.00	1,574.00	2,187.00	2,487.00	2,773.00	3,050.00	3,318.00
14,250.00	1,577.00	2,191.00	2,492.00	2,778.00	3,056.00	3,325.00
14,300.00	1,581.00	2,195.00	2,497.00	2,784.00	3,062.00	3,332.00
14,350.00	1,584.00	2,200.00	2,502.00	2,789.00	3,068.00	3,338.00
14,400.00	1,587.00	2,204.00	2,506.00	2,795.00	3,074.00	3,345.00
14,450.00	1,590.00	2,208.00	2,511.00	2,800.00	3,080.00	3,351.00
14,500.00	1,593.00	2,213.00	2,516.00	2,806.00	3,086.00	3,358.00
14,550.00	1,596.00	2,217.00	2,521.00	2,811.00	3,092.00	3,365.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
14,600.00	1,599.00	2,221.00	2,526.00	2,817.00	3,098.00	3,371.00
14,650.00	1,602.00	2,225.00	2,531.00	2,822.00	3,104.00	3,378.00
14,700.00	1,605.00	2,230.00	2,536.00	2,828.00	3,111.00	3,384.00
14,750.00	1,608.00	2,234.00	2,541.00	2,833.00	3,117.00	3,391.00
14,800.00	1,611.00	2,238.00	2,546.00	2,839.00	3,123.00	3,397.00
14,850.00	1,614.00	2,243.00	2,551.00	2,844.00	3,129.00	3,404.00
14,900.00	1,617.00	2,247.00	2,556.00	2,850.00	3,135.00	3,411.00
14,950.00	1,620.00	2,251.00	2,561.00	2,855.00	3,141.00	3,417.00
15,000.00	1,623.00	2,255.00	2,566.00	2,861.00	3,147.00	3,424.00
15,050.00	1,626.00	2,260.00	2,571.00	2,866.00	3,153.00	3,430.00
15,100.00	1,629.00	2,264.00	2,576.00	2,872.00	3,159.00	3,437.00
15,150.00	1,632.00	2,268.00	2,581.00	2,877.00	3,165.00	3,444.00
15,200.00	1,635.00	2,272.00	2,585.00	2,883.00	3,171.00	3,450.00
15,250.00	1,638.00	2,277.00	2,590.00	2,888.00	3,177.00	3,457.00
15,300.00	1,641.00	2,281.00	2,595.00	2,894.00	3,183.00	3,463.00
15,350.00	1,644.00	2,285.00	2,600.00	2,899.00	3,189.00	3,470.00
15,400.00	1,647.00	2,290.00	2,605.00	2,905.00	3,195.00	3,476.00
15,450.00	1,650.00	2,294.00	2,610.00	2,910.00	3,201.00	3,483.00
15,500.00	1,653.00	2,298.00	2,615.00	2,916.00	3,207.00	3,490.00
15,550.00	1,656.00	2,302.00	2,620.00	2,921.00	3,213.00	3,496.00
15,600.00	1,659.00	2,307.00	2,625.00	2,927.00	3,219.00	3,503.00
15,650.00	1,663.00	2,311.00	2,630.00	2,932.00	3,226.00	3,509.00
15,700.00	1,666.00	2,315.00	2,635.00	2,938.00	3,232.00	3,516.00
15,750.00	1,669.00	2,320.00	2,640.00	2,943.00	3,238.00	3,523.00
15,800.00	1,672.00	2,324.00	2,645.00	2,949.00	3,244.00	3,529.00
15,850.00	1,675.00	2,328.00	2,650.00	2,954.00	3,250.00	3,536.00
15,900.00	1,678.00	2,332.00	2,655.00	2,960.00	3,256.00	3,542.00
15,950.00	1,681.00	2,337.00	2,659.00	2,965.00	3,262.00	3,549.00
16,000.00	1,684.00	2,341.00	2,664.00	2,971.00	3,268.00	3,555.00
16,050.00	1,687.00	2,345.00	2,669.00	2,976.00	3,274.00	3,562.00
16,100.00	1,690.00	2,349.00	2,674.00	2,982.00	3,280.00	3,569.00
16,150.00	1,692.00	2,353.00	2,678.00	2,986.00	3,285.00	3,574.00
16,200.00	1,695.00	2,356.00	2,682.00	2,990.00	3,289.00	3,579.00
16,250.00	1,698.00	2,360.00	2,686.00	2,994.00	3,294.00	3,584.00
16,300.00	1,700.00	2,363.00	2,689.00	2,999.00	3,299.00	3,589.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
16,350.00	1,703.00	2,367.00	2,693.00	3,003.00	3,303.00	3,594.00
16,400.00	1,706.00	2,370.00	2,697.00	3,007.00	3,308.00	3,599.00
16,450.00	1,708.00	2,374.00	2,701.00	3,011.00	3,313.00	3,604.00
16,500.00	1,711.00	2,377.00	2,705.00	3,016.00	3,317.00	3,609.00
16,550.00	1,714.00	2,381.00	2,708.00	3,020.00	3,322.00	3,614.00
16,600.00	1,716.00	2,384.00	2,712.00	3,024.00	3,327.00	3,619.00
16,650.00	1,719.00	2,388.00	2,716.00	3,028.00	3,331.00	3,624.00
16,700.00	1,722.00	2,391.00	2,720.00	3,033.00	3,336.00	3,630.00
16,750.00	1,724.00	2,395.00	2,724.00	3,037.00	3,341.00	3,635.00
16,800.00	1,727.00	2,398.00	2,728.00	3,041.00	3,345.00	3,640.00
16,850.00	1,730.00	2,402.00	2,731.00	3,045.00	3,350.00	3,645.00
16,900.00	1,732.00	2,405.00	2,735.00	3,050.00	3,355.00	3,650.00
16,950.00	1,735.00	2,409.00	2,739.00	3,054.00	3,359.00	3,655.00
17,000.00	1,737.00	2,412.00	2,743.00	3,058.00	3,364.00	3,660.00
17,050.00	1,740.00	2,416.00	2,747.00	3,062.00	3,369.00	3,665.00
17,100.00	1,743.00	2,419.00	2,750.00	3,067.00	3,373.00	3,670.00
17,150.00	1,745.00	2,423.00	2,754.00	3,071.00	3,378.00	3,675.00
17,200.00	1,748.00	2,426.00	2,758.00	3,075.00	3,383.00	3,680.00
17,250.00	1,751.00	2,430.00	2,762.00	3,079.00	3,387.00	3,685.00
17,300.00	1,753.00	2,433.00	2,766.00	3,084.00	3,392.00	3,691.00
17,350.00	1,756.00	2,437.00	2,769.00	3,088.00	3,397.00	3,696.00
17,400.00	1,759.00	2,440.00	2,773.00	3,092.00	3,401.00	3,701.00
17,450.00	1,761.00	2,444.00	2,777.00	3,096.00	3,406.00	3,706.00
17,500.00	1,764.00	2,447.00	2,781.00	3,101.00	3,411.00	3,711.00
17,550.00	1,767.00	2,451.00	2,785.00	3,105.00	3,415.00	3,716.00
17,600.00	1,769.00	2,454.00	2,788.00	3,109.00	3,420.00	3,721.00
17,650.00	1,772.00	2,458.00	2,792.00	3,113.00	3,425.00	3,726.00
17,700.00	1,774.00	2,461.00	2,796.00	3,118.00	3,429.00	3,731.00
17,750.00	1,777.00	2,465.00	2,800.00	3,122.00	3,434.00	3,736.00
17,800.00	1,780.00	2,468.00	2,804.00	3,126.00	3,439.00	3,741.00
17,850.00	1,782.00	2,472.00	2,808.00	3,130.00	3,443.00	3,746.00
17,900.00	1,785.00	2,475.00	2,811.00	3,135.00	3,448.00	3,752.00
17,950.00	1,788.00	2,478.00	2,815.00	3,139.00	3,453.00	3,757.00
18,000.00	1,790.00	2,482.00	2,819.00	3,143.00	3,457.00	3,762.00
18,050.00	1,793.00	2,485.00	2,823.00	3,147.00	3,462.00	3,767.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
18,100.00	1,796.00	2,489.00	2,827.00	3,152.00	3,467.00	3,772.00
18,150.00	1,798.00	2,492.00	2,830.00	3,156.00	3,471.00	3,777.00
18,200.00	1,801.00	2,496.00	2,834.00	3,160.00	3,476.00	3,782.00
18,250.00	1,804.00	2,499.00	2,838.00	3,164.00	3,481.00	3,787.00
18,300.00	1,806.00	2,503.00	2,842.00	3,169.00	3,485.00	3,792.00
18,350.00	1,809.00	2,506.00	2,846.00	3,173.00	3,490.00	3,797.00
18,400.00	1,812.00	2,510.00	2,849.00	3,177.00	3,495.00	3,802.00
18,450.00	1,814.00	2,513.00	2,853.00	3,181.00	3,499.00	3,807.00
18,500.00	1,817.00	2,517.00	2,857.00	3,186.00	3,504.00	3,813.00
18,550.00	1,819.00	2,520.00	2,861.00	3,190.00	3,509.00	3,818.00
18,600.00	1,822.00	2,524.00	2,865.00	3,194.00	3,513.00	3,823.00
18,650.00	1,825.00	2,527.00	2,868.00	3,198.00	3,518.00	3,828.00
18,700.00	1,827.00	2,531.00	2,872.00	3,203.00	3,523.00	3,833.00
18,750.00	1,830.00	2,534.00	2,876.00	3,207.00	3,528.00	3,838.00
18,800.00	1,833.00	2,538.00	2,880.00	3,211.00	3,532.00	3,843.00
18,850.00	1,835.00	2,541.00	2,884.00	3,215.00	3,537.00	3,848.00
18,900.00	1,838.00	2,545.00	2,888.00	3,220.00	3,542.00	3,853.00
18,950.00	1,841.00	2,548.00	2,891.00	3,224.00	3,546.00	3,858.00
19,000.00	1,843.00	2,552.00	2,895.00	3,228.00	3,551.00	3,863.00
19,050.00	1,846.00	2,555.00	2,899.00	3,232.00	3,556.00	3,868.00
19,100.00	1,849.00	2,559.00	2,903.00	3,237.00	3,560.00	3,874.00
19,150.00	1,851.00	2,562.00	2,907.00	3,241.00	3,565.00	3,879.00
19,200.00	1,854.00	2,566.00	2,910.00	3,245.00	3,570.00	3,884.00
19,250.00	1,856.00	2,569.00	2,914.00	3,249.00	3,574.00	3,889.00
19,300.00	1,859.00	2,573.00	2,918.00	3,254.00	3,579.00	3,894.00
19,350.00	1,862.00	2,576.00	2,922.00	3,258.00	3,584.00	3,899.00
19,400.00	1,864.00	2,580.00	2,926.00	3,262.00	3,588.00	3,904.00
19,450.00	1,867.00	2,583.00	2,929.00	3,266.00	3,593.00	3,909.00
19,500.00	1,870.00	2,587.00	2,933.00	3,271.00	3,598.00	3,914.00
19,550.00	1,872.00	2,590.00	2,937.00	3,275.00	3,602.00	3,919.00
19,600.00	1,875.00	2,594.00	2,941.00	3,279.00	3,607.00	3,924.00
19,650.00	1,878.00	2,597.00	2,945.00	3,283.00	3,612.00	3,929.00
19,700.00	1,880.00	2,601.00	2,948.00	3,288.00	3,616.00	3,935.00
19,750.00	1,883.00	2,604.00	2,952.00	3,292.00	3,621.00	3,940.00
19,800.00	1,886.00	2,608.00	2,956.00	3,296.00	3,626.00	3,945.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
19,850.00	1,888.00	2,611.00	2,960.00	3,300.00	3,630.00	3,950.00
19,900.00	1,891.00	2,615.00	2,964.00	3,305.00	3,635.00	3,955.00
19,950.00	1,893.00	2,618.00	2,967.00	3,309.00	3,640.00	3,960.00
20,000.00	1,896.00	2,622.00	2,971.00	3,313.00	3,644.00	3,965.00
20,050.00	1,899.00	2,625.00	2,975.00	3,317.00	3,649.00	3,970.00
20,100.00	1,901.00	2,628.00	2,979.00	3,321.00	3,654.00	3,975.00
20,150.00	1,904.00	2,632.00	2,983.00	3,326.00	3,658.00	3,980.00
20,200.00	1,907.00	2,635.00	2,987.00	3,330.00	3,663.00	3,985.00
20,250.00	1,909.00	2,639.00	2,990.00	3,334.00	3,668.00	3,990.00
20,300.00	1,912.00	2,642.00	2,994.00	3,338.00	3,672.00	3,996.00
20,350.00	1,915.00	2,646.00	2,998.00	3,343.00	3,677.00	4,001.00
20,400.00	1,917.00	2,649.00	3,002.00	3,347.00	3,682.00	4,006.00
20,450.00	1,920.00	2,653.00	3,006.00	3,351.00	3,686.00	4,011.00
20,500.00	1,923.00	2,656.00	3,009.00	3,355.00	3,691.00	4,016.00
20,550.00	1,925.00	2,660.00	3,013.00	3,360.00	3,696.00	4,021.00
20,600.00	1,928.00	2,663.00	3,017.00	3,364.00	3,700.00	4,026.00
20,650.00	1,931.00	2,667.00	3,021.00	3,368.00	3,705.00	4,031.00
20,700.00	1,933.00	2,670.00	3,025.00	3,372.00	3,710.00	4,036.00
20,750.00	1,936.00	2,674.00	3,028.00	3,377.00	3,714.00	4,041.00
20,800.00	1,938.00	2,677.00	3,032.00	3,381.00	3,719.00	4,046.00
20,850.00	1,941.00	2,681.00	3,036.00	3,385.00	3,724.00	4,051.00
20,900.00	1,944.00	2,684.00	3,040.00	3,389.00	3,728.00	4,056.00
20,950.00	1,946.00	2,688.00	3,044.00	3,394.00	3,733.00	4,062.00
21,000.00	1,949.00	2,691.00	3,047.00	3,398.00	3,738.00	4,067.00
21,050.00	1,952.00	2,695.00	3,051.00	3,402.00	3,742.00	4,072.00
21,100.00	1,954.00	2,698.00	3,055.00	3,406.00	3,747.00	4,077.00
21,150.00	1,957.00	2,702.00	3,059.00	3,411.00	3,752.00	4,082.00
21,200.00	1,960.00	2,705.00	3,063.00	3,415.00	3,756.00	4,087.00
21,250.00	1,962.00	2,709.00	3,067.00	3,419.00	3,761.00	4,092.00
21,300.00	1,965.00	2,712.00	3,070.00	3,423.00	3,766.00	4,097.00
21,350.00	1,968.00	2,716.00	3,074.00	3,428.00	3,770.00	4,102.00
21,400.00	1,970.00	2,719.00	3,078.00	3,432.00	3,775.00	4,107.00
21,450.00	1,973.00	2,723.00	3,082.00	3,436.00	3,780.00	4,112.00
21,500.00	1,975.00	2,726.00	3,086.00	3,440.00	3,784.00	4,117.00
21,550.00	1,978.00	2,730.00	3,089.00	3,445.00	3,789.00	4,123.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
21,600.00	1,981.00	2,733.00	3,093.00	3,449.00	3,794.00	4,128.00
21,650.00	1,983.00	2,737.00	3,097.00	3,453.00	3,798.00	4,133.00
21,700.00	1,986.00	2,740.00	3,101.00	3,457.00	3,803.00	4,138.00
21,750.00	1,989.00	2,744.00	3,105.00	3,462.00	3,808.00	4,143.00
21,800.00	1,991.00	2,747.00	3,108.00	3,466.00	3,812.00	4,148.00
21,850.00	1,994.00	2,751.00	3,112.00	3,470.00	3,817.00	4,153.00
21,900.00	1,997.00	2,754.00	3,116.00	3,474.00	3,822.00	4,158.00
21,950.00	1,999.00	2,758.00	3,120.00	3,479.00	3,827.00	4,163.00
22,000.00	2,002.00	2,761.00	3,124.00	3,483.00	3,831.00	4,168.00
22,050.00	2,005.00	2,765.00	3,127.00	3,487.00	3,836.00	4,173.00
22,100.00	2,007.00	2,768.00	3,131.00	3,491.00	3,841.00	4,178.00
22,150.00	2,010.00	2,772.00	3,135.00	3,496.00	3,845.00	4,184.00
22,200.00	2,012.00	2,775.00	3,139.00	3,500.00	3,850.00	4,189.00
22,250.00	2,015.00	2,779.00	3,143.00	3,504.00	3,855.00	4,194.00
22,300.00	2,018.00	2,782.00	3,147.00	3,508.00	3,859.00	4,199.00
22,350.00	2,020.00	2,785.00	3,150.00	3,513.00	3,864.00	4,204.00
22,400.00	2,022.00	2,788.00	3,153.00	3,515.00	3,867.00	4,207.00
22,450.00	2,024.00	2,790.00	3,155.00	3,517.00	3,869.00	4,210.00
22,500.00	2,025.00	2,792.00	3,157.00	3,520.00	3,872.00	4,212.00
22,550.00	2,027.00	2,793.00	3,158.00	3,522.00	3,874.00	4,215.00
22,600.00	2,028.00	2,795.00	3,160.00	3,524.00	3,876.00	4,217.00
22,650.00	2,029.00	2,797.00	3,162.00	3,526.00	3,878.00	4,220.00
22,700.00	2,031.00	2,799.00	3,164.00	3,528.00	3,881.00	4,222.00
22,750.00	2,032.00	2,801.00	3,166.00	3,530.00	3,883.00	4,225.00
22,800.00	2,034.00	2,803.00	3,168.00	3,532.00	3,885.00	4,227.00
22,850.00	2,035.00	2,804.00	3,169.00	3,534.00	3,888.00	4,230.00
22,900.00	2,036.00	2,806.00	3,171.00	3,536.00	3,890.00	4,232.00
22,950.00	2,038.00	2,808.00	3,173.00	3,538.00	3,892.00	4,235.00
23,000.00	2,039.00	2,810.00	3,175.00	3,540.00	3,894.00	4,237.00
23,050.00	2,041.00	2,812.00	3,177.00	3,542.00	3,897.00	4,240.00
23,100.00	2,042.00	2,814.00	3,179.00	3,544.00	3,899.00	4,242.00
23,150.00	2,044.00	2,816.00	3,181.00	3,546.00	3,901.00	4,245.00
23,200.00	2,045.00	2,817.00	3,182.00	3,548.00	3,904.00	4,247.00
23,250.00	2,046.00	2,819.00	3,184.00	3,550.00	3,906.00	4,250.00
23,300.00	2,048.00	2,821.00	3,186.00	3,552.00	3,908.00	4,252.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
23,350.00	2,049.00	2,823.00	3,188.00	3,555.00	3,910.00	4,254.00
23,400.00	2,051.00	2,825.00	3,190.00	3,557.00	3,913.00	4,257.00
23,450.00	2,052.00	2,827.00	3,192.00	3,559.00	3,915.00	4,259.00
23,500.00	2,053.00	2,828.00	3,193.00	3,561.00	3,917.00	4,262.00
23,550.00	2,055.00	2,830.00	3,195.00	3,563.00	3,919.00	4,264.00
23,600.00	2,056.00	2,832.00	3,197.00	3,565.00	3,922.00	4,267.00
23,650.00	2,058.00	2,834.00	3,199.00	3,567.00	3,924.00	4,269.00
23,700.00	2,059.00	2,836.00	3,201.00	3,569.00	3,926.00	4,272.00
23,750.00	2,061.00	2,838.00	3,203.00	3,571.00	3,929.00	4,274.00
23,800.00	2,062.00	2,840.00	3,204.00	3,573.00	3,931.00	4,277.00
23,850.00	2,063.00	2,841.00	3,206.00	3,575.00	3,933.00	4,279.00
23,900.00	2,065.00	2,843.00	3,208.00	3,577.00	3,935.00	4,282.00
23,950.00	2,066.00	2,845.00	3,210.00	3,579.00	3,938.00	4,284.00
24,000.00	2,068.00	2,847.00	3,212.00	3,581.00	3,940.00	4,287.00
24,050.00	2,069.00	2,849.00	3,214.00	3,583.00	3,942.00	4,289.00
24,100.00	2,070.00	2,851.00	3,216.00	3,585.00	3,945.00	4,292.00
24,150.00	2,072.00	2,852.00	3,217.00	3,587.00	3,947.00	4,294.00
24,200.00	2,073.00	2,854.00	3,219.00	3,589.00	3,949.00	4,297.00
24,250.00	2,075.00	2,856.00	3,221.00	3,592.00	3,951.00	4,299.00
24,300.00	2,076.00	2,858.00	3,223.00	3,594.00	3,954.00	4,302.00
24,350.00	2,077.00	2,860.00	3,225.00	3,596.00	3,956.00	4,304.00
24,400.00	2,079.00	2,862.00	3,227.00	3,598.00	3,958.00	4,307.00
24,450.00	2,080.00	2,864.00	3,228.00	3,600.00	3,961.00	4,309.00
24,500.00	2,082.00	2,865.00	3,230.00	3,602.00	3,963.00	4,312.00
24,550.00	2,083.00	2,867.00	3,232.00	3,604.00	3,965.00	4,314.00
24,600.00	2,085.00	2,869.00	3,234.00	3,606.00	3,967.00	4,317.00
24,650.00	2,086.00	2,871.00	3,236.00	3,608.00	3,970.00	4,319.00
24,700.00	2,087.00	2,873.00	3,238.00	3,610.00	3,972.00	4,322.00
24,750.00	2,089.00	2,875.00	3,240.00	3,612.00	3,974.00	4,324.00
24,800.00	2,090.00	2,876.00	3,241.00	3,614.00	3,977.00	4,326.00
24,850.00	2,092.00	2,878.00	3,243.00	3,616.00	3,979.00	4,329.00
24,900.00	2,093.00	2,880.00	3,245.00	3,618.00	3,981.00	4,331.00
24,950.00	2,094.00	2,882.00	3,247.00	3,620.00	3,983.00	4,334.00
25,000.00	2,096.00	2,884.00	3,249.00	3,622.00	3,986.00	4,336.00
25,050.00	2,097.00	2,886.00	3,251.00	3,624.00	3,988.00	4,339.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
25,100.00	2,099.00	2,887.00	3,252.00	3,626.00	3,990.00	4,341.00
25,150.00	2,100.00	2,889.00	3,254.00	3,629.00	3,993.00	4,344.00
25,200.00	2,102.00	2,891.00	3,256.00	3,631.00	3,995.00	4,346.00
25,250.00	2,103.00	2,893.00	3,258.00	3,633.00	3,997.00	4,349.00
25,300.00	2,104.00	2,895.00	3,260.00	3,635.00	3,999.00	4,351.00
25,350.00	2,106.00	2,897.00	3,262.00	3,637.00	4,002.00	4,354.00
25,400.00	2,107.00	2,899.00	3,264.00	3,639.00	4,004.00	4,356.00
25,450.00	2,109.00	2,900.00	3,265.00	3,641.00	4,006.00	4,359.00
25,500.00	2,110.00	2,902.00	3,267.00	3,643.00	4,009.00	4,361.00
25,550.00	2,111.00	2,904.00	3,269.00	3,645.00	4,011.00	4,364.00
25,600.00	2,113.00	2,906.00	3,271.00	3,647.00	4,013.00	4,366.00
25,650.00	2,114.00	2,908.00	3,273.00	3,649.00	4,015.00	4,369.00
25,700.00	2,116.00	2,910.00	3,275.00	3,651.00	4,018.00	4,371.00
25,750.00	2,117.00	2,911.00	3,276.00	3,653.00	4,020.00	4,374.00
25,800.00	2,119.00	2,913.00	3,278.00	3,655.00	4,022.00	4,376.00
25,850.00	2,120.00	2,915.00	3,280.00	3,657.00	4,024.00	4,379.00
25,900.00	2,121.00	2,917.00	3,282.00	3,659.00	4,027.00	4,381.00
25,950.00	2,123.00	2,919.00	3,284.00	3,661.00	4,029.00	4,384.00
26,000.00	2,124.00	2,921.00	3,286.00	3,663.00	4,031.00	4,386.00
26,050.00	2,126.00	2,923.00	3,287.00	3,666.00	4,034.00	4,389.00
26,100.00	2,127.00	2,924.00	3,289.00	3,668.00	4,036.00	4,391.00
26,150.00	2,128.00	2,926.00	3,291.00	3,670.00	4,038.00	4,394.00
26,200.00	2,130.00	2,928.00	3,293.00	3,672.00	4,040.00	4,396.00
26,250.00	2,131.00	2,930.00	3,295.00	3,674.00	4,043.00	4,399.00
26,300.00	2,133.00	2,932.00	3,297.00	3,676.00	4,045.00	4,401.00
26,350.00	2,134.00	2,934.00	3,299.00	3,678.00	4,047.00	4,403.00
26,400.00	2,136.00	2,935.00	3,300.00	3,680.00	4,050.00	4,406.00
26,450.00	2,137.00	2,937.00	3,302.00	3,682.00	4,052.00	4,408.00
26,500.00	2,138.00	2,939.00	3,304.00	3,684.00	4,054.00	4,411.00
26,550.00	2,140.00	2,941.00	3,306.00	3,686.00	4,056.00	4,413.00
26,600.00	2,141.00	2,943.00	3,308.00	3,688.00	4,059.00	4,416.00
26,650.00	2,143.00	2,945.00	3,310.00	3,690.00	4,061.00	4,418.00
26,700.00	2,144.00	2,947.00	3,311.00	3,692.00	4,063.00	4,421.00
26,750.00	2,145.00	2,948.00	3,313.00	3,694.00	4,066.00	4,423.00
26,800.00	2,147.00	2,950.00	3,315.00	3,696.00	4,068.00	4,426.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
26,850.00	2,148.00	2,952.00	3,317.00	3,698.00	4,070.00	4,428.00
26,900.00	2,150.00	2,954.00	3,319.00	3,701.00	4,072.00	4,431.00
26,950.00	2,151.00	2,956.00	3,321.00	3,703.00	4,075.00	4,433.00
27,000.00	2,153.00	2,958.00	3,323.00	3,705.00	4,077.00	4,436.00
27,050.00	2,154.00	2,959.00	3,324.00	3,707.00	4,079.00	4,438.00
27,100.00	2,155.00	2,961.00	3,326.00	3,709.00	4,082.00	4,441.00
27,150.00	2,157.00	2,963.00	3,328.00	3,711.00	4,084.00	4,443.00
27,200.00	2,158.00	2,965.00	3,330.00	3,713.00	4,086.00	4,446.00
27,250.00	2,160.00	2,967.00	3,332.00	3,715.00	4,088.00	4,448.00
27,300.00	2,161.00	2,969.00	3,334.00	3,717.00	4,091.00	4,451.00
27,350.00	2,162.00	2,970.00	3,335.00	3,719.00	4,093.00	4,453.00
27,400.00	2,164.00	2,972.00	3,337.00	3,721.00	4,095.00	4,456.00
27,450.00	2,165.00	2,974.00	3,339.00	3,723.00	4,098.00	4,458.00
27,500.00	2,167.00	2,976.00	3,341.00	3,725.00	4,100.00	4,461.00
27,550.00	2,168.00	2,978.00	3,343.00	3,727.00	4,102.00	4,463.00
27,600.00	2,170.00	2,980.00	3,345.00	3,729.00	4,104.00	4,466.00
27,650.00	2,171.00	2,982.00	3,347.00	3,731.00	4,107.00	4,468.00
27,700.00	2,172.00	2,983.00	3,348.00	3,733.00	4,109.00	4,471.00
27,750.00	2,174.00	2,985.00	3,350.00	3,735.00	4,111.00	4,473.00
27,800.00	2,175.00	2,987.00	3,352.00	3,738.00	4,114.00	4,475.00
27,850.00	2,177.00	2,989.00	3,354.00	3,740.00	4,116.00	4,478.00
27,900.00	2,178.00	2,991.00	3,356.00	3,742.00	4,118.00	4,480.00
27,950.00	2,179.00	2,993.00	3,357.00	3,744.00	4,120.00	4,483.00
28,000.00	2,181.00	2,994.00	3,359.00	3,746.00	4,122.00	4,485.00
28,050.00	2,182.00	2,996.00	3,361.00	3,748.00	4,125.00	4,488.00
28,100.00	2,184.00	2,998.00	3,363.00	3,750.00	4,127.00	4,490.00
28,150.00	2,185.00	3,000.00	3,365.00	3,752.00	4,129.00	4,492.00
28,200.00	2,186.00	3,001.00	3,366.00	3,754.00	4,131.00	4,495.00
28,250.00	2,188.00	3,003.00	3,368.00	3,756.00	4,133.00	4,497.00
28,300.00	2,189.00	3,005.00	3,370.00	3,758.00	4,136.00	4,500.00
28,350.00	2,190.00	3,007.00	3,372.00	3,759.00	4,138.00	4,502.00
28,400.00	2,192.00	3,009.00	3,374.00	3,761.00	4,140.00	4,504.00
28,450.00	2,193.00	3,010.00	3,375.00	3,763.00	4,142.00	4,507.00
28,500.00	2,194.00	3,012.00	3,377.00	3,765.00	4,145.00	4,509.00
28,550.00	2,196.00	3,014.00	3,379.00	3,767.00	4,147.00	4,512.00

## Georgia Schedule of Basic Child Support Obligations

Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
28,600.00	2,197.00	3,016.00	3,381.00	3,769.00	4,149.00	4,514.00
28,650.00	2,199.00	3,017.00	3,382.00	3,771.00	4,151.00	4,516.00
28,700.00	2,200.00	3,019.00	3,384.00	3,773.00	4,153.00	4,519.00
28,750.00	2,201.00	3,021.00	3,386.00	3,775.00	4,156.00	4,521.00
28,800.00	2,203.00	3,023.00	3,388.00	3,777.00	4,158.00	4,524.00
28,850.00	2,204.00	3,025.00	3,390.00	3,779.00	4,160.00	4,526.00
28,900.00	2,205.00	3,026.00	3,391.00	3,781.00	4,162.00	4,528.00
28,950.00	2,207.00	3,028.00	3,393.00	3,783.00	4,164.00	4,531.00
29,000.00	2,208.00	3,030.00	3,395.00	3,785.00	4,167.00	4,533.00
29,050.00	2,210.00	3,032.00	3,397.00	3,787.00	4,169.00	4,536.00
29,100.00	2,211.00	3,034.00	3,398.00	3,789.00	4,171.00	4,538.00
29,150.00	2,212.00	3,035.00	3,400.00	3,791.00	4,173.00	4,540.00
29,200.00	2,214.00	3,037.00	3,402.00	3,793.00	4,175.00	4,543.00
29,250.00	2,215.00	3,039.00	3,404.00	3,795.00	4,178.00	4,545.00
29,300.00	2,216.00	3,041.00	3,406.00	3,797.00	4,180.00	4,548.00
29,350.00	2,218.00	3,042.00	3,407.00	3,799.00	4,182.00	4,550.00
29,400.00	2,219.00	3,044.00	3,409.00	3,801.00	4,184.00	4,552.00
29,450.00	2,220.00	3,046.00	3,411.00	3,803.00	4,186.00	4,555.00
29,500.00	2,222.00	3,048.00	3,413.00	3,805.00	4,189.00	4,557.00
29,550.00	2,223.00	3,050.00	3,415.00	3,807.00	4,191.00	4,560.00
29,600.00	2,225.00	3,051.00	3,416.00	3,809.00	4,193.00	4,562.00
29,650.00	2,226.00	3,053.00	3,418.00	3,811.00	4,195.00	4,564.00
29,700.00	2,227.00	3,055.00	3,420.00	3,813.00	4,197.00	4,567.00
29,750.00	2,229.00	3,057.00	3,422.00	3,815.00	4,200.00	4,569.00
29,800.00	2,230.00	3,058.00	3,423.00	3,817.00	4,202.00	4,572.00
29,850.00	2,231.00	3,060.00	3,425.00	3,819.00	4,204.00	4,574.00
29,900.00	2,233.00	3,062.00	3,427.00	3,821.00	4,206.00	4,576.00
29,950.00	2,234.00	3,064.00	3,429.00	3,823.00	4,208.00	4,579.00
30,000.00	2,236.00	3,066.00	3,431.00	3,825.00	4,211.00	4,581.00

(Ga. L. 1870, p. 413, § 2; Code 1873, § 1742; Code 1882, § 1742; Civil Code 1895, § 2462; Civil Code 1910, § 2981; Code 1933, § 30-207; Ga. L. 1979, p. 466, § 12; Ga. L. 1989, p. 861, § 1; Ga. L. 1991, p. 94, § 19; Ga. L. 1992, p. 1833, § 1; Ga. L. 1994, p. 1728, § 1; Ga. L. 1995, p. 603, § 2; Ga. L. 1996, p. 453, § 6; Ga. L. 2005, p. 224, § 5/HB 221; Ga. L. 2006, p. 72, § 19/SB 465; Ga. L. 2006, p. 583, § 4/SB 382; Ga. L. 2007, p. 47, § 19/SB 103; Ga. L. 2008, p. 272, §§ 1-9/SB 483; Ga. L. 2009, p.

96, §§ 1-6/HB 145; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 878, § 19/HB 1387; Ga. L. 2011, p. 550, § 1/SB 115.)

**The 2011 amendment**, effective July 1, 2011, in paragraph (f)(2), deleted “and” from the end of division (f)(2)(B)(v), added present subparagraph (f)(2)(C), and redesignated former subparagraph (f)(2)(C) as subparagraph (f)(2)(D).

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

## JUDICIAL DECISIONS

### ANALYSIS

GENERAL CONSIDERATION  
MODIFICATION OF AWARD  
WRITING REQUIREMENT  
EDUCATION OF CHILDREN

#### General Consideration

**Stature authorized lump sum child support awards.** — Trial court did not err in ordering a husband to pay his entire child support obligation for the next 13 years in a single payment because nothing in the child support guidelines statute, O.C.G.A. § 19-6-15, expressly precluded lump-sum child support awards; the statute as amended explicitly authorizes trial courts to exercise discretion in setting the manner and timing of payment, and the language of § 19-6-15(c)(2)(B), which requires trial courts to specify in what manner, how often, to whom, and until when the support shall be paid is certainly broad enough to encompass an order to pay a child support obligation all at once. *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

**Medical expenses.** — Trial court did not abuse the court’s discretion in requiring a husband to pay the entire cost of the child’s medical insurance and uncovered medical expenses because the child support worksheet incorporated into the trial court’s order clearly showed that an adjustment to the presumptive amounts of child support had been made to account for the expense of the premiums for the child’s insurance coverage; in accordance with O.C.G.A. § 19-6-15(h)(2)(A), and using the wife’s pro rata share of the parties’ combined income, 26 percent of the amount of the health insurance premium had been deducted from the husband’s

basic child support obligation and added to the wife’s. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

**Earning capacity rather than gross income, etc.**

Trial court properly imputed income to the mother when calculating child support because the evidence showed that the mother was making \$32,000 and had health insurance available when the mother apparently made the decision to quit a job in Florida and move to Georgia to live with the mother’s parents, and there was no evidence that the mother involuntarily left that employment. *Caldwell v. Meadows*, 312 Ga. App. 70, 717 S.E.2d 668 (2011).

**K-1 income is self-employment income.** — Because Internal Revenue Service Schedule K-1 income is categorized as self-employment income, O.C.G.A. § 19-6-15(f)(1)(B), that income is not subject to the requirements set forth in § 19-6-15(f)(1)(D) for variable income. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

**No deviation from guidelines.**

Trial court did not abuse the court’s discretion in declining to make a deviation to the presumptive amount of child support because under O.C.G.A. § 19-6-15(c)(2)(E)(iii) the trial court stated that the court did not find that the presumptive amount of child support was excessive or inadequate, or that it was unjust or inappropriate under the circum-

stances and also did not find that a downward deviation in the husband's support amount would be in the child's best interests; in order to grant any deviation, the trial court must find that the application of the presumptive amount of child support would be unjust or inappropriate and that the best interest of the child for whom support is being determined will be served by deviation from the presumptive amount of child support under § 19-6-15(c)(2)(E)(iii). *Willis v. Willis*, 288 Ga. 577, 707 S.E.2d 344 (2010).

**Payment of life insurance policies.** — Trial court did not abuse the court's discretion by declining to consider the cost of the life insurance in calculating the parent's child support obligation because the evidence indicated that a parent's company, rather than the parent, paid the premiums on the parent's life insurance policies. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

**Fringe benefits properly included in gross income.** — Trial court did not improperly include in a husband's gross income a company's payment on the loan for the husband's company-owned truck, the company's coverage of vehicle expenses, including gas, tags, insurance and repairs, the company's payment for the husband's cell phone, and the husband's use of a company-issued credit card because those benefits were properly considered fringe benefits and included in gross income under O.C.G.A. § 19-6-15(f)(1)(C) because those payments significantly reduced personal living expenses. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

**Income from medical practice not counted twice in child support and property division awards.** — Trial court did not erroneously count a husband's income twice by awarding portions of his business in the child support awards and again in the property division as "business alimony". Under both capitalization methods, the wife's expert deducted a reasonable salary expense for the husband. With the separate bases for the alimony award and the property division clearly acknowledged before the court, there was no double dipping. *Miller v. Miller*, 288 Ga. 274, 705 S.E.2d 839 (2010).

### **Deviation from guidelines.**

Trial court erred in denying a wife's motion for a new trial, which argued that a divorce decree contained a deviation from the child support guidelines without including any findings stating why the deviation was appropriate because the separation agreement between the wife and her husband, as well as the trial court's order incorporating that agreement, contained a deviation since there was, at least, an \$18 difference in the amount of child support mandated by the child support guidelines and that which was actually being paid by the parties, and the trial court's order contained none of the findings required by O.C.G.A. § 19-6-15; because the parties' separation agreement did not comply with the provisions contained in § 19-6-15 and did not contain findings of fact as required to support a deviation, the trial court should have rejected the agreement. *Holloway v. Holloway*, 288 Ga. 147, 702 S.E.2d 132 (2010).

**Trial court not required to calculate a discounted present value.** — Trial court did not abuse the court's broad discretion in setting the amount of a child support award because nothing in the child support guidelines statute, O.C.G.A. § 19-6-15, mandated that the trial court calculate a discounted present value, and a husband did not propose or provide supporting evidence of a discount rate that better reflected the economic outlook; the trial court recognized the court's discretion to engage in a present value calculation but declined to do so, explaining that the husband failed to show that such a reduction would be appropriate in light of the current economic climate, one in which even the most secure financial investments offer extremely low rates of return. *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

### **Consideration of insurance premiums.**

Trial court erred by ordering a parent to maintain health insurance on the parent's minor child because the court failed to account for the parent's payment of health insurance in calculating the parent's child support obligation. *Dupree v. Dupree*, 287 Ga. 319, 695 S.E.2d 628 (2010).

**Determination of gross income proper.**

Trial court did not abuse the court's discretion in the court's review of a husband's history of Internal Revenue Service Schedule K-1 income because other amounts not actually received, e.g., payroll taxes, were included in gross income under O.C.G.A. § 19-6-15(f)(1)(A); the statutory guidelines provide only that income from a closely held corporation "should be carefully reviewed" when determining an appropriate level of gross income to use in calculating child support pursuant to § 19-6-15(f)(1)(B). *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

**Computation of child support proper.** — Because the trial court properly found that the monthly net business profit listed on a husband's child support worksheet was the most credible calculation of his monthly income, and because a child's competitive cheerleading expenses were not a "necessity," the trial court properly awarded child support to the wife pursuant to O.C.G.A. § 19-6-15(f)(1)(B) and (i)(2)(J)(ii). *Ellis v. Ellis*, 290 Ga. 616, 724 S.E.2d 384 (2012).

**Dismissal of modification petition adjudication on the merits.** — Superior court erred in attempting to recast the court's dismissal of a husband's first petition for modification of child support as "simply a sanction" and not an adjudication on the merits so as to render the dismissal outside the ambit of O.C.G.A. § 19-6-15(k)(2) because in dismissing the husband's first petition for modification, the superior court did not specify that the order was not an adjudication on the merits, and under O.C.G.A. § 9-11-41(b), it was a final order on the claim for downward modification of child support. *Bagwell v. Bagwell*, 290 Ga. 378, 721 S.E.2d 847 (2012).

**Award of attorney fees improper.** — Trial court erred in awarding a father attorney fees on the ground that he was the prevailing party under O.C.G.A. § 19-6-15(k)(5) in a mother's action seeking a modification of custody and child support because a modification of child support was not warranted; therefore, the father was not the prevailing party. Har-

ris v. Williams, 304 Ga. App. 390, 696 S.E.2d 131 (2010).

**Modification of Award**

**Modification was not retroactive to the filing of the petition.** — Trial court did not err in imputing income of \$2,500 to an unemployed parent based on the parent's training and experience as a paralegal and the trial court's finding that the parent had failed to show efforts to obtain employment and was choosing not to work. The downward adjustment by the trial court was not retroactive to the date of the petition for modification; O.C.G.A. § 19-6-15(j) did not apply to this case, in which only modification of child support was sought. *Galvin v. Galvin*, 288 Ga. 125, 702 S.E.2d 155 (2010).

**Petition for modification time-barred.** — Parent's petition for downward modification of the parent's child support obligation should have been dismissed because the parent did not invoke the exception contained in O.C.G.A. § 19-6-15(k)(2)(C) in the parent's successive petition; the relevant time frame for the parent's alleged loss of income in excess of the statutory exception was from the date of the prior modification ruling, and the material allegations of the petition were essentially that of the prior petition for modification. *Bagwell v. Bagwell*, 290 Ga. 378, 721 S.E.2d 847 (2012).

**Modification procedure not dependent upon public assistance.**

In a child support modification action, the trial court erred in concluding that evidence of the need for additional support was necessary and that the Department of Human Resources (DHR) lacked standing to file a modification action on behalf of a child not receiving public assistance unless the court could show the child's need for additional support, and in failing to apply the child support guidelines of O.C.G.A. § 19-6-15 and to justify any departure therefrom; by express statutory amendment, the General Assembly no longer reserved for the private bar those modification actions which involved children who did not receive public assistance and needed no additional support, but whose court-ordered provider enjoyed

an enhanced financial status. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

#### **Modification properly denied.**

Because two years had not elapsed from a prior court order disposing of an earlier petition for support modification filed by one parent, the trial court did not err when the court dismissed under O.C.G.A. § 19-6-15(k)(2) the portion of a petition seeking modification of the child-support award. *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

**Evidence did not support upward modification.** — Trial court record was devoid of evidence that a parent had the ability or means to earn an amount found by the trial court, such that the court's grant of the other parent's request for an upward modification of the parent's child support obligation could not stand; the evidence was uncontested that the parent's income and earning capacity had dramatically decreased. *Herrin v. Herrin*, 287 Ga. 427, 696 S.E.2d 626 (2010).

**Increase of child support obligation improper.** — Trial court abused the court's discretion in increasing a mother's child support obligation because the court failed to determine whether her income had substantially changed from the entry of the divorce decree pursuant to O.C.G.A. § 19-6-15(k)(4), and even if the trial court correctly disregarded the reduction in the mother's income, the evidence failed to show an increase in the mother's income since her divorce; while it appeared that the trial court modified the child support award consistent with existing child support guidelines, the court had no valid basis to do so. *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010).

**Annual payment of child support based on commissions.** — Trial court, by including an additional child support provision requiring a father to pay an annual payment of 25 percent of his gross commissions on top of the presumptive child support amount, circumvented the requirement that a court only may deviate from the presumptive amount after making the necessary findings in O.C.G.A. § 19-6-15(i)(1)(B). *Stowell v. Huguenard*, 288 Ga. 628, 706 S.E.2d 419 (2011).

#### **Writing Requirement**

##### **Written findings required.**

When a final child support order included a specific deviation for extraordinary educational expenses under O.C.G.A. § 19-6-15(i)(2)(J)(i), but the trial court failed to make the statutorily required written findings necessary to support the deviation, remand was required for a redetermination of the order, with any deviation to be based upon proper written findings. *Brogdon v. Brogdon*, 290 Ga. 618, 723 S.E.2d 421 (2012).

##### **Written finding of fact not required when the court orders the statutory presumptive amount.**

Father failed to show that a trial court's determination that the mother had no monthly gross income constituted a "deviation" that required the trial court to make findings of fact under O.C.G.A. § 19-6-15. The statute contemplated that a deviation was an increase or decrease from the presumptive amount of child support. *Kennedy v. Kennedy*, 309 Ga. App. 590, 711 S.E.2d 103 (2011).

#### **Education of Children**

**Award of tuition outside of support award without necessary findings was an unexplained deviation from guidelines.** — Trial court's order regarding child support did not comply with O.C.G.A. § 19-6-15(c)(2)(E) and (i)(1)(B) because the order failed to include the necessary findings; the trial court's award of tuition outside of the support award was an unexplained deviation. *Johnson v. Ware*, 313 Ga. App. 774, 723 S.E.2d 18 (2012).

##### **Continuous full-time student.**

Trial court erred when the court determined that a father's child-support obligation terminated because the child was not enrolled in and attending school on a full-time basis between June and August because the agreement between the father and the mother did not require the child's continuous attendance in school during the summer months but required only the child's full-time attendance in school; full-time school does not require attendance in school during the summer

months. *Draughn v. Draughn*, 288 Ga. 734, 707 S.E.2d 52 (2011).

**Child enrolled in online courses.** — Trial court erred in finding that a child's enrollment in online courses did not satisfy a modification order's requirement that the child "attend" school in order to have the father pay child support beyond the child's attainment of majority; once a

child enrolls in approved online courses in an effort to graduate from a secondary school, the child's online attendance constitutes "attending school" for purposes of extending child support beyond the child's attainment of the age of majority. *Draughn v. Draughn*, 288 Ga. 734, 707 S.E.2d 52 (2011).

## **19-6-17. Application for child support following custody award; service of petition; hearing; review; modification of order; enforcement; judgment.**

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

## **19-6-19. Revision of judgment for permanent alimony generally — When authorized; petition and hearing; cohabitation with third party as ground for revision; attorney's fees; temporary modification pending final trial.**

**Law reviews.** — For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010).

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

#### **GENERAL CONSIDERATION**

##### **General Consideration**

**Cited** in *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

### **RESEARCH REFERENCES**

**ALR.** — Retirement of husband as change of circumstances warranting modification of divorce decree — early retirement, 36 ALR6th 1.

## **19-6-26. Definitions; jurisdiction.**

### **JUDICIAL DECISIONS**

**Cited** in *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

**19-6-28. Enforcement of orders; contempt; service of rule nisi by mail; rule nisi form.**

**JUDICIAL DECISIONS**

**Authority to enforce child support.**

— Given the court's continuing, exclusive jurisdiction, a trial court possessed authority to enforce the child support provisions of a divorce decree prospectively and as to past violations. In exercising that

authority, the trial court, as a matter of Georgia law, was able to impose contempt sanctions for willful violations of the court's decree. *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

**19-6-34. Inclusion of life insurance in order of support.**

**JUDICIAL DECISIONS**

**Premium excluded from guidelines.**

— Trial court did not abuse the court's discretion by declining to consider the cost of the life insurance in calculating a parent's child support obligation because the evidence indicated that a parent's company, rather than the parent, paid the premiums on the parent's life insurance policies. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

**Parent required to maintain life in-**

**surance for child.** — Trial court did not abuse the court's discretion in requiring a parent to maintain life insurance for the benefit of the child and by ordering the creation of a trust for any life insurance proceeds; O.C.G.A. § 19-6-34(a) does not limit the value of any life insurance to the future child support obligation of the parent, and the amount is within the trial court's discretion. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

---

## CHAPTER 7

### PARENT AND CHILD RELATIONSHIP GENERALLY

Article 1	Sec.	
General Provisions		
Sec. 19-7-3.	19-7-5.	“Grandparent” defined; original actions for visitation rights or intervention; revocation or amendment of visitation rights; appointment of guardian ad litem; mediation; hear-

ing; notification of grandchild's participation in events.

Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report.

## ARTICLE 1

### GENERAL PROVISIONS

#### **19-7-1. In whom parental power lies; how such power lost; recovery for homicide of child.**

#### **JUDICIAL DECISIONS**

##### **ANALYSIS**

###### **GENERAL CONSIDERATION**

###### **CUSTODY**

###### **3. CUSTODY RIGHTS AS BETWEEN PARENTS AND THIRD PARTIES**

###### **TORT RECOVERY**

###### **1. INTRAFAMILY IMMUNITY**

##### **General Consideration**

**Statute inapplicable following death of parents.** — Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children's father without notice and a hearing and without consideration of the children's best interests; O.C.G.A. § 19-7-1 was inapplicable because the statute was limited to a custody action between a parent and specified relatives, and the children's parents were deceased. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

##### **Grandparents' rights.**

Under O.C.G.A. § 19-7-1(b.1), grandparents were entitled to custody of their two grandchildren given the children's special needs due to autism and developmental delays and the parents' denial of the children's problems and inability to care for the children. *Whitehead v. Myers (In the Interest of D. W.)*, 311 Ga. App. 680, 716 S.E.2d 785 (2011).

**Cited in** *Morris v. Morris*, 309 Ga. App. 387, 710 S.E.2d 601 (2011).

##### **Custody**

###### **3. Custody Rights as Between Parents and Third Parties**

###### **Dispute between parent and third party.**

Since a previous visitation order related to the grandparent's right to visitation, not custody, and the legal issues to be decided varied, the trial court properly determined that res judicata did not bar the grandparents' petition for custody under the Uniform Child Jurisdiction and Custody Act, O.C.G.A. § 19-9-40 et seq.; the Act does not provide that the judgment is conclusive as to all issues which could have been put in issue. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

Trial court erroneously concluded that grandparents' petition seeking custody of a mother's children failed to state a claim because the custody petition gave fair notice that the grandparents sought custody of the child under O.C.G.A. §§ 19-7-1(b.1) and 19-9-2 based upon the mother's alleged murder of the father; those allegations were sufficient to survive a motion to dismiss. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

In a Georgia action to modify an Alaska child custody determination, which was entered pursuant to an agreement of the

parties, the Georgia trial court did not apply the correct best interest of the child standard of proof under O.C.G.A. § 19-7-1(b.1), and instead erroneously placed the Durden standard of proof on the mother. The Durden standard did not apply because there had not been a permanent award of custody to a third party made pursuant to an evidentiary hearing with specific findings by clear and convincing evidence of present parental unfitness. Lopez v. Olson, 314 Ga. App. 533, No. A11A1794, 2012 Ga. App. LEXIS 228 (2012).

#### **Award of joint custody to third party.**

Because the trial court applied the correct legal standard in O.C.G.A. § 19-7-1(b.1) in finding that the natural parent presumption was rebutted and that awarding custody to the grandparents was in the child's best interests, and because the grandparents were properly permitted to intervene under O.C.G.A. § 9-11-24(a)(2), the mother was not entitled to appellate relief. Trotter v. Ayres, No. A12A0702, 2012 Ga. App. LEXIS 245 (Mar. 5, 2012).

**Differing standards in visitation and custody issues.** — Trial court properly determined that collateral estoppel did not bar the grandparents' petition for custody of a mother's children because different issues were actually and necessarily decided in the grandparents' visita-

tion action; in the visitation action, the issues were harm to the child if visitation was not granted and whether visitation would be in the best interest of the children, and in the custody action, the issues were whether the children would suffer physical or emotional harm if custody remained with the mother. Scott v. Scott, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

**Placement with grandparents appropriate.** — There was clear and convincing evidence that a child would suffer physical and emotional harm if placed with either biological parent, as required by O.C.G.A. § 19-7-1(b.1), based on the presence of drugs, alcohol, violence, arrests in the home, and the mother's failure to send the child to kindergarten, allowing placement of the child with the child's grandparents. Harris v. Snelgrove, 290 Ga. 181, 718 S.E.2d 300 (2011).

#### **Tort Recovery**

##### **1. Intrafamily Immunity**

###### **Parent driving under the influence.**

— While a mother was driving under the influence of alcohol at the time of the automobile accident in which her son was injured, she did not commit a malicious or willful act of such cruelty so as to authorize forfeiture of parental authority; accordingly, pursuant to O.C.G.A. § 19-7-1, neither the son nor the father were entitled to relief. Donegan v. Davis, 310 Ga. App. 446, 714 S.E.2d 49 (2011).

#### **19-7-3. "Grandparent" defined; original actions for visitation rights or intervention; revocation or amendment of visitation rights; appointment of guardian ad litem; mediation; hearing; notification of grandchild's participation in events.**

(a) As used in this Code section, the term "grandparent" means the parent of a parent of a minor child, the parent of a minor child's parent who has died, and the parent of a minor child's parent whose parental rights have been terminated.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, any grandparent shall have the right to file an original action for visitation rights to a minor child or to intervene in and seek to obtain visitation rights in any action in which any court in this state shall have before it any question concerning the custody of a minor child, a divorce of the parents or a parent of such minor child, a termination

of the parental rights of either parent of such minor child, or visitation rights concerning such minor child or whenever there has been an adoption in which the adopted child has been adopted by the child's blood relative or by a stepparent, notwithstanding the provisions of Code Section 19-8-19.

(2) This subsection shall not authorize an original action where the parents of the minor child are not separated and the child is living with both parents.

(c)(1) Upon the filing of an original action or upon intervention in an existing proceeding under subsection (b) of this Code section, the court may grant any grandparent of the child reasonable visitation rights if the court finds the health or welfare of the child would be harmed unless such visitation is granted and if the best interests of the child would be served by such visitation. In considering whether the health or welfare of the child would be harmed without such visitation, the court shall consider and may find that harm to the child is reasonably likely to result where, prior to the original action or intervention:

(A) The minor child resided with the grandparent for six months or more;

(B) The grandparent provided financial support for the basic needs of the child for at least one year;

(C) There was an established pattern of regular visitation or child care by the grandparent with the child; or

(D) Any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.

The court shall make specific written findings of fact in support of its rulings.

(2) An original action requesting visitation rights shall not be filed by any grandparent more than once during any two-year period and shall not be filed during any year in which another custody action has been filed concerning the child. After visitation rights have been granted to any grandparent, the legal custodian, guardian of the person, or parent of the child may petition the court for revocation or amendment of such visitation rights, for good cause shown, which the court, in its discretion, may grant or deny; but such a petition shall not be filed more than once in any two-year period.

(3) While a parent's decision regarding grandparent visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide grandparent contact would

result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her grandparent or who is not provided some minimal opportunity for contact with his or her grandparent may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption.

(4) In no case shall the granting of visitation rights to a grandparent interfere with a child's school or regularly scheduled extracurricular activities. Visitation time awarded to a grandparent shall not be less than 24 hours in any one-month period.

(d) Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award the parent of the deceased, incapacitated, or incarcerated parent of such minor child reasonable visitation to such child during his or her minority if the court in its discretion finds that such visitation would be in the best interests of the child. The custodial parent's judgment as to the best interests of the child regarding visitation shall be given deference by the court but shall not be conclusive.

(e) If the court finds that the grandparent or grandparents can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning grandparent or grandparents, may:

(1) Appoint a guardian ad litem for the minor child; and

(2) Assign the issue of visitation rights of a grandparent for mediation.

(f) In the event that the court does not order mediation or upon failure of the parties to reach an agreement through mediation, the court shall fix a time for the hearing of the issue of visitation rights of the grandparent or grandparents.

(g) Whether or not visitation is awarded to a grandparent, the court may direct a custodial parent, by court order, to notify such grandparent of every performance of the minor child to which the public is admitted, including, but not limited to, musical concerts, graduations, recitals, and sporting events or games. (Ga. L. 1976, p. 247, § 1; Ga. L. 1980, p. 936, § 1; Ga. L. 1981, p. 1318, § 1; Ga. L. 1986, p. 10, § 19; Ga. L. 1986, p. 1516, § 1; Ga. L. 1988, p. 864, § 1; Ga. L. 1990, p. 1572, § 4; Ga. L. 1993, p. 456, § 1; Ga. L. 1996, p. 1089, § 1; Ga. L. 2012, p. 860, § 1/HB 1198.)

**The 2012 amendment**, effective May 1, 2012, in subsection (b), added the paragraph designations, inserted "paragraph (2) of" in paragraph (b)(1) and deleted "of the" preceding "parents" at the end of paragraph (b)(2); in subsection (c), added

the paragraph designations, deleted a comma following "granted" and added the last sentence to paragraph (c)(1), added subparagraphs (c)(1)(A) through (c)(1)(D), in the present undesignated paragraph of paragraph (c)(1), deleted the former last

sentence, which read: "There shall be no presumption in favor of visitation by any grandparent.", and added paragraphs (c)(3) and (c)(4); added present subsection

(d); redesignated former subsections (d) and (e) as present subsections (e) and (f), respectively; and added subsection (g).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### APPLICATION

#### General Consideration

**Construction of word "parent".** — Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term "parent" to only "natural parents" or "biological parents," there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state interference, and in construing O.C.G.A. § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored; grandparents may have a sincere, beneficent interest in participating in their grandchildren's lives, and this interest often coincides with the best interest of the child, but beyond constitutional considerations, policy decisions addressing disputes between grandparents and parents are the province of the legislature. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), aff'd, 290 Ga. 361, 720 S.E.2d 634 (2012).

**Grandparents' rights not affected by stepparent adoption.** — Because O.C.G.A. § 19-8-19 provides for the termination of all legal relationships between an adopted child and his or her relatives, under O.C.G.A. § 19-7-3(b), grandparents' rights are not affected by an adoption by a stepparent. *Lightfoot v. Hollins*, 308 Ga. App. 538, 707 S.E.2d 491 (2011), overruled on other grounds, *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

**Cited** in *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

#### Application

##### When grandparents are not entitled to relief.

Trial court erred in denying a motion filed by a child's mother and stepfather to dismiss a paternal grandparents' petition for visitation with the child because the petition was not authorized, and the trial court erred by interpreting the word "parent" in O.C.G.A. § 19-7-3(b) to include only biological parents; the child's father surrendered his parental rights, the stepfather adopted the child, and the mother and stepfather lived with the child. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), aff'd, 290 Ga. 361, 720 S.E.2d 634 (2012).

##### Visitation rights precluded when child adopted by stepfather.

Term "parents" in O.C.G.A. § 19-7-3(b) did not exclude a child's adoptive parent; therefore, because a child was living with the child's mother and adoptive father, who were not separated, the child's natural grandparents had no right to file an original action for visitation with the child under the statute. Upon their son's termination of his parental rights to the child, the grandparents became strangers to the child, pursuant to O.C.G.A. § 19-8-19. *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

**Efforts at grandparent visitation thwarted by parent.** — Trial court did not err in denying a father's motion for summary judgment in maternal grandparents' action seeking visitation with his child pursuant to O.C.G.A. § 19-7-3(b) because the trial court had the discretion to choose to allow the case to go forward under O.C.G.A. § 9-11-56(f) in order for the guardian ad litem to investigate the

facts since the lack of a relationship between the grandparents and the child could or could not be the fault of the grandparents when there was some evidence that the father had thwarted attempts at visitation in the early years following the mother's death; although the grandparents' affidavits in opposition to the father's motion for summary judgment contained information about the child's best interests, the grandparents did not provide any direct evidence of harm that the child would suffer as a result of not having visitation with the grandparents, but instead, the grandparents relied on O.C.G.A. § 9-11-56(f) and the trial court's appointment of a guardian ad litem under O.C.G.A. § 19-7-3(d)(1) to argue that the facts needed to be further developed and that a decision on summary judgment was premature. *Lightfoot v. Hollins*, 308 Ga. App. 538, 707 S.E.2d 491 (2011), overruled on other grounds, *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

**Visitation to father's sister improper.** — Trial court erred in granting a father's sister visitation because the sister was neither a grandparent seeking visitation nor a family member seeking custody but was a non-party to the mother's action seeking child support and the father's counterclaim for legitimation. *Morris v. Morris*, 309 Ga. App. 387, 710 S.E.2d 601 (2011).

**Trial court required to make findings of fact.** — Trial court erred in dismissing a paternal grandmother's petition for visitation with three minor grandchildren who had been adopted by their step-father because the trial court was required to determine if the parents were separated and whether the child was living with both of the parents. If the parents were separated and the child was not living with both of the parents, O.C.G.A. § 19-7-3 would authorize the grandmother to seek visitation. *Hudgins v. Harding*, 313 Ga. App. 613, 722 S.E.2d 355 (2012).

## **19-7-5. Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report.**

(a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

(b) As used in this Code section, the term:

- (1) "Abortion" shall have the same meaning as set forth in Code Section 15-11-111.
- (2) "Abused" means subjected to child abuse.
- (3) "Child" means any person under 18 years of age.
- (4) "Child abuse" means:
  - (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, how-

ever, that physical forms of discipline may be used as long as there is no physical injury to the child;

- (B) Neglect or exploitation of a child by a parent or caretaker thereof;
- (C) Sexual abuse of a child; or
- (D) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an "abused" child.

(5) "Child service organization personnel" means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) "Clergy" means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(7) "Pregnancy resource center" means an organization or facility that:

- (A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;
- (B) Does not provide or refer for abortions;
- (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and
- (D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) "Reproductive health care facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) "School" means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

(10) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any person;
- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(11) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

- (A) Prostitution, as defined in Code Section 16-6-9; or
- (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(c)(1) The following persons having reasonable cause to believe that a child has been abused shall report or cause reports of that abuse to be made as provided in this Code section:

- (A) Physicians licensed to practice medicine, interns, or residents;
- (B) Hospital or medical personnel;
- (C) Dentists;
- (D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;
- (E) Podiatrists;

- (F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 24 of Title 43 or nurse's aides;
- (G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;
- (H) School teachers;
- (I) School administrators;
- (J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;
- (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12;
- (L) Child-counseling personnel;
- (M) Child service organization personnel;
- (N) Law enforcement personnel; or
- (O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that a child is abused may report or cause reports to be made as provided in this Code section.

(e) An oral report shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused, by telephone or otherwise and followed by a report in writing, if requested, to a child welfare agency providing protective services, as designated by the Department of Human Services, or, in the

absence of such agency, to an appropriate police authority or district attorney. If a report of child abuse is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney. Such reports shall contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. Photographs of the child's injuries to be used as documentation in support of allegations by hospital employees or volunteers, physicians, law enforcement personnel, school officials, or employees or volunteers of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photographs shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

(h) Any person or official required by subsection (c) of this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information. (Code 1933, § 74-111, enacted by Ga. L. 1965, p. 588, § 1; Ga. L. 1968, p. 1196,

§ 1; Ga. L. 1973, p. 309, § 1; Ga. L. 1974, p. 438, § 1; Ga. L. 1977, p. 242, §§ 1-3; Ga. L. 1978, p. 2059, §§ 1, 2; Ga. L. 1980, p. 921, § 1; Ga. L. 1981, p. 1034, §§ 1-3; Ga. L. 1988, p. 1624, § 1; Ga. L. 1990, p. 1761, § 1; Ga. L. 1993, p. 1695, §§ 1, 1.1; Ga. L. 1994, p. 97, § 19; Ga. L. 1999, p. 81, § 19; Ga. L. 2006, p. 485, § 1/SB 442; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 733, § 1/SB 69; Ga. L. 2012, p. 899, § 5-1/HB 1176.)

**The 2012 amendment**, effective July 1, 2012, in subsection (b), added present paragraph (b)(1), redesignated former paragraphs (b)(1) through (b)(3) as present paragraphs (b)(2) through (b)(4), respectively, inserted “that” in present subparagraph (b)(4)(A), added paragraphs (b)(5) through (b)(9), redesignated former paragraphs (b)(3.1) and (b)(4) as present paragraphs (b)(10) and (b)(11), respectively; added “or nurse’s aides” at the end in subparagraph (c)(1)(F); deleted “or” at the end of subparagraph (c)(1)(M), substituted “; or” for a period at the end of subparagraph (c)(1)(N), and added subparagraph (c)(1)(O); in paragraph (c)(2), in the first sentence, inserted “child”, and substituted “an employee of or volunteer at” for “a member of the staff of”, and substituted “An employee or volunteer” for “A staff member” at the beginning of the second sentence; in subsection (e),

twice substituted “employees or volunteers” for “staff”, and substituted “photographs” for “photograph” at the beginning of the fifth sentence; at the end of subsection (g), inserted the proviso at the end of the first sentence, and added the last sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

## JUDICIAL DECISIONS

**No immunity for false reports of child abuse.** — Trial court did not err in granting a protective order under O.C.G.A. § 16-5-90(a)(1) against a foster parent who had placed a family under extensive surveillance through a combination of Internet searches and third party observations of the family’s home and contacted law enforcement, causing groundless investigations. The foster parent was not immune from liability under O.C.G.A. § 19-7-5(f) because the foster parent had not received any information that a child in the home had been subjected to abuse. *Owen v. Watts*, 307 Ga. App. 493, 705 S.E.2d 852 (2010).

**Refusal to give jury instruction proper.** — Trial court did not err by refusing to charge the jury regarding O.C.G.A. § 19-7-5 because the defendant cited no authority in support of the defendant’s proposition that the trial court erred in refusing to give the instruction; the individual whom the defendant alleged failed to report the abuse as required by the statute was not a witness at trial, and the issue was irrelevant to the jury’s determination of the defendant’s guilt. *Hamrick v. State*, 304 Ga. App. 378, 696 S.E.2d 403 (2010).

## ARTICLE 2

### LEGITIMACY

**19-7-20. What children are legitimate; disproving legitimacy; legitimation by marriage of parents and recognition of child.**

#### JUDICIAL DECISIONS

##### ANALYSIS

##### APPLICATION

##### Application

**Intervention in legitimation proceeding.** — Trial court erred in granting a putative biological father's legitimation petition while a husband's timely, meritorious motion to intervene of right under O.C.G.A. § 9-11-24(a) was pending because when the husband moved to intervene in the legitimation proceeding he was the child's legal father and had parental and custodial rights to the child, and the husband clearly had an interest in the legitimation proceeding; the husband's interest as the child's legal father would be impaired by a decision of the trial court

that was unfavorable to him, and his interest was not adequately represented by the parties to the action since the child's mother consented to the legitimation action. *Baker v. Lankford*, 306 Ga. App. 327, 702 S.E.2d 666 (2010).

**Denial of petition proper.** — Trial court properly denied the father's petition to legitimate a child since the father abandoned the father's interest when the father took no action during the wife's pregnancy or birth and did not seek to legitimate the child until more than five years after receiving the DNA results. *Matthews v. Dukes*, No. A11A2264, 2012 Ga. App. LEXIS 281 (Mar. 14, 2012).

**19-7-21. When children conceived by artificial insemination legitimate.**

**Law reviews.** — For note, "It Takes a Village: Considering the Other Interests at Stake When Extending Inheritance

Rights to Posthumously Conceived Children," see 44 Ga. L. Rev. 873 (2010).

## ARTICLE 3

### DETERMINATION OF PATERNITY

**19-7-43. Petition; by whom brought; effect of agreement on right to bring petition; stay pending birth of child; court order for blood tests; genetic tests.**

#### JUDICIAL DECISIONS

**Order requiring a parent to submit to genetic testing erroneous and not supported.**

Trial court's order requiring that an alleged father and a mother submit to

paternity blood testing was erroneous because the doctrine of res judicata clearly proscribed the trial court's reconsideration of the issue of paternity; an unappealed and unmodified final order

establishing paternity and child support, which was predicated on the parties' settlement agreement and paternity acknowledgment expressly consented to by the father, adjudged that he was the father of the mother's child, and while the

father moved to set aside the final order, the trial court found that he had failed to meet his burden of disestablishing paternity under O.C.G.A. § 19-7-54 and denied the motion. *Venable v. Parker*, 307 Ga. App. 880, 706 S.E.2d 211 (2011).

### **19-7-46.1. Name or social security number on birth certificate or other record as evidence of paternity; signed voluntary acknowledgment of paternity.**

#### **JUDICIAL DECISIONS**

##### **Order requiring a parent to submit to genetic testing.**

Trial court's order requiring that an alleged father and a mother submit to paternity blood testing was erroneous because the doctrine of res judicata clearly proscribed the trial court's reconsideration of the issue of paternity; an unappealed and unmodified final order establishing paternity and child support, which was predicated on the parties' set-

tlement agreement and paternity acknowledgment expressly consented to by the father, adjudged that he was the father of the mother's child, and while the father moved to set aside the final order, the trial court found that he had failed to meet his burden of disestablishing paternity under O.C.G.A. § 19-7-54 and denied the motion. *Venable v. Parker*, 307 Ga. App. 880, 706 S.E.2d 211 (2011).

### **19-7-50. Costs.**

#### **JUDICIAL DECISIONS**

**Cited** in *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

### **19-7-51. Order of support, visitation privileges, and other provisions.**

#### **JUDICIAL DECISIONS**

**Cited** in *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

### **19-7-54. Motion to set aside determination of paternity.**

#### **JUDICIAL DECISIONS**

**Res judicata proscribed reconsideration of paternity.** — Trial court's order requiring that an alleged father and a mother submit to paternity blood testing was erroneous because the doctrine of res judicata clearly proscribed the trial court's reconsideration of the issue of paternity; an unappealed and unmodified final order

establishing paternity and child support, which was predicated on the parties' settlement agreement and paternity acknowledgment expressly consented to by the father, adjudged that he was the father of the mother's child, and while the father moved to set aside the final order, the trial court found that he had failed to

meet his burden of disestablishing paternity under O.C.G.A. § 19-7-54 and denied

the motion. *Venable v. Parker*, 307 Ga. App. 880, 706 S.E.2d 211 (2011).

## CHAPTER 8

### ADOPTION

#### Article 1

##### General Provisions

Sec.		Sec.	
19-8-1.	Definitions.	19-8-14.	Timing of adoption hearing; required records; filing.
19-8-5.	Surrender or termination of parental or guardian's rights where child to be adopted by third party.	19-8-23.	Where records of adoption kept; examination by parties and attorneys; use of information by agency and department.
19-8-13.	Petition; filing and contents; financial disclosures; attorney's affidavit.	19-8-26.	How surrender of parental rights executed; how and when surrender may be withdrawn; forms.

### ARTICLE 1

#### GENERAL PROVISIONS

##### 19-8-1. Definitions.

For purposes of this chapter, the term:

- (1) "Biological father" means the male who impregnated the biological mother resulting in the birth of the child.
- (2) "Child" means a person who is under 18 years of age and who is sought to be adopted.

(3) "Child-placing agency" means an agency licensed as a child-placing agency pursuant to Chapter 5 of Title 49.

(4) "Department" means the Department of Human Services.

(4.1) "Evaluator" means the person or agency that conducts a home study. An evaluator shall be a licensed child-placing agency, the department, or a licensed professional with at least two years of adoption related professional experience, including a licensed clinical social worker, licensed master social worker, licensed marriage and family therapist, or licensed professional counselor; provided, however, that where none of the foregoing evaluators are available, the court may appoint a guardian ad litem or court appointed special advocate to conduct the home study.

(5) "Guardian" means a legal guardian of the person of a child.

(5.1) "Home study" means an evaluation by an evaluator of the petitioner's home environment for the purpose of determining the suitability of the environment as a prospective adoptive home for a child. Such evaluation shall consider the petitioner's physical health, emotional maturity, financial circumstances, family, and social background and shall conform to the rules and regulations established by the department for child-placing agencies for adoption home studies.

(5.2) "Home study report" means the written report generated as a result of the home study.

(6) "Legal father" means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

(D) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

(E) Has legitimated the child pursuant to Code Section 19-7-21.1 and who has not surrendered or had terminated his rights to the child.

(7) "Legal mother" means the female who is the biological or adoptive mother of the child and who has not surrendered or had terminated her rights to the child.

(8) "Parent" means either the legal father or the legal mother of the child.

(9) "Petitioner" means a person who petitions to adopt or terminate rights to a child pursuant to this chapter.

(10) "Putative father registry" means the registry established and maintained pursuant to subsections (d) and (e) of Code Section 19-11-9. (Code 1981, § 19-8-1, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1997, p. 1686, § 4; Ga. L. 2008, p. 667, § 7/SB 88; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 573, § 1/SB 172.)

**The 2011 amendment**, effective July 1, 2011, added paragraphs (4.1), (5.1), and (5.2). See editor's note for applicability.

**Editor's notes.** — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code

section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

## JUDICIAL DECISIONS

**Adoptive parents.** — Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term “parent” to only “natural parents” or “biological parents,” there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological par-

ents to raise their children without state interference; in construing § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored, and the clear intent of the adoption statute is to give adoptive parents full legal rights. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), aff’d, 290 Ga. 361, 720 S.E.2d 634 (2012).

### 19-8-3. Who may adopt a child; when petition must be filed in names of both spouses.

## JUDICIAL DECISIONS

**No prohibition against denying single individual right to adopt.** — Trial court abused the court’s discretion by denying a foster parent’s petition to adopt the parent’s foster child on the ground that placing the child with the foster parent, who was not married to the individual with whom the foster parent lived, violated the state’s public policy because all of the evidence showed that the adoption would be in the child’s best interest, and the trial court failed to apply the law as written and determine whether it was in the child’s best interest to allow the adop-

tion; all of the witnesses, including the guardian ad litem the trial court appointed to represent the child’s interests and the Department of Family and Children’s Services adoption specialist, testified that the adoption was in the child’s best interest and that to remove the child from the only family the child had ever known would be devastating to the child, and O.C.G.A. § 19-8-3 clearly did not prohibit the adoption because the General Assembly did not prohibit unmarried couples from adopting. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

### 19-8-5. Surrender or termination of parental or guardian’s rights where child to be adopted by third party.

(a) Except as otherwise authorized in this chapter, a child who has any living parent or guardian may be adopted by a third party who is neither the stepparent nor relative of that child, as described in subsection (a) of Code Sections 19-8-6 and 19-8-7, only if each such living parent and each such guardian has voluntarily and in writing surrendered all of his or her rights to such child to that third party for the purpose of enabling that third party to adopt such child. Except as provided in subsection (m) of this Code section, no child shall be placed with a third party for purposes of adoption unless prior to the date of placement a home study shall have been completed, and the home study report recommends placement of a child in such third party’s home.

(b) In the case of a child 14 years of age or older, the written consent of the child to his adoption must be given and acknowledged in the presence of the court.

(c) The surrender specified in paragraphs (1) and (2) of subsection (e) of this Code section shall be executed following the birth of the child, and the pre-birth surrender specified in paragraph (3) of subsection (e) of this Code section shall be executed prior to the birth of the child. Each surrender shall be executed in the presence of a notary. The name and address of each person to whom the child is surrendered may be omitted to protect confidentiality, provided the surrender sets forth the name and address of his agent for purposes of notice of withdrawal as provided for in subsection (d) of this Code section. A copy shall be delivered to the individual signing the surrender at the time of the execution thereof.

(d) A person signing a surrender pursuant to this Code section shall have the right to withdraw the surrender as provided in subsection (b) of Code Section 19-8-9.

(e)(1) The surrender by a parent or guardian specified in subsection (a) of this Code section shall meet the requirements of subsection (c) of Code Section 19-8-26.

(2) The biological father who is not the legal father of a child may surrender all his rights to the child for purposes of an adoption pursuant to this Code section. That surrender shall meet the requirements of subsection (d) of Code Section 19-8-26.

(3)(A) The biological father who is not the legal father of a child may execute a surrender of his rights to the child prior to the birth of the child for the purpose of an adoption pursuant to this Code section. A pre-birth surrender, when signed under oath by the alleged biological father, shall serve to relinquish the alleged biological father's rights to the child and to waive the alleged biological father's right to notice of any proceeding with respect to the child's adoption, custody, or guardianship. The court in any adoption proceeding shall have jurisdiction to enter a final order of adoption of the child based upon the pre-birth surrender and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes.

(B) The responsibilities of an alleged biological father are permanently terminated only upon the entry of a final order of adoption. A person executing a pre-birth surrender pursuant to this Code section shall have the right to withdraw the surrender within ten days from the date of execution thereof, notwithstanding the date of birth of the child.

(C) If a final order of adoption is not entered after the execution of a pre-birth surrender and paternity is established by acknowl-

edgment, by administrative order, or by judicial order, then the alleged biological father shall be responsible for child support or other financial obligations to the child or to the child's mother, or to both.

(D) The pre-birth surrender shall not be valid for use by a legal father as defined under paragraph (6) of Code Section 19-8-1 or for any man who has executed either a voluntary acknowledgment of legitimization pursuant to the provisions of paragraph (2) of subsection (g) of Code Section 19-7-22 or a voluntary acknowledgment of paternity pursuant to the provisions of Code Section 19-7-46.1.

(E) The pre-birth surrender may be executed at any time after the biological mother executes a sworn statement identifying such person as an alleged biological father of the biological mother's unborn child.

(F) The pre-birth surrender shall meet the requirements of subsection (f) of Code Section 19-8-26.

(f) A surrender of rights shall be acknowledged by the person who surrenders those rights by also signing an acknowledgment meeting the requirements of subsection (g) of Code Section 19-8-26.

(g) Whenever the legal mother surrenders her parental rights pursuant to this Code section, she shall execute an affidavit meeting the requirements of subsection (h) of Code Section 19-8-26.

(h) Whenever rights are surrendered pursuant to this Code section, the representative of each petitioner shall execute an affidavit meeting the requirements of subsection (k) of Code Section 19-8-26.

(i) A surrender pursuant to this Code section may be given by any parent or biological father who is not the legal father of the child sought to be adopted irrespective of whether such parent or biological father has arrived at the age of majority. The surrender given by any such minor shall be binding upon him as if the individual were in all respects *sui juris*.

(j) A copy of each surrender specified in subsection (a) of this Code section, together with a copy of the acknowledgment specified in subsection (f) of this Code section and a copy of the affidavits specified in subsections (g) and (h) of this Code section and the name and address of each person to whom the child is surrendered, shall be mailed, by registered or certified mail or statutory overnight delivery, return receipt requested, to the

Office of Adoptions  
Georgia Department of Human Services  
Atlanta, Georgia

within 15 days from the execution thereof. Upon receipt of the copy the department may commence its investigation as required in Code Section 19-8-16.

(k) A petition for adoption pursuant to subsection (a) of this Code section shall be filed within 60 days from the date of the surrender. If the petition is not filed within the time period specified by this subsection or if the proceedings resulting from the petition are not concluded with an order granting the petition, the surrender shall operate as follows according to the election made therein by the legal parent or guardian of the child:

(1) In favor of that legal parent or guardian, with the express stipulation that neither this nor any other provision of the surrender shall be deemed to impair the validity, absolute finality, or totality of the surrender under any other circumstance, once the revocation period has elapsed;

(2) In favor of the licensed child-placing agency designated in the surrender of rights, if any; or

(3) If the legal parent or guardian is not designated and no child-placing agency is designated in the surrender of rights, or if the designated child-placing agency declines to accept the child for placement for adoption, in favor of the department for placement for adoption pursuant to subsection (a) of Code Section 19-8-4. The court may waive the 60 day time period for filing the petition for excusable neglect.

(l) In any surrender pursuant to this Code section, the provisions of Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children, if applicable, shall be complied with.

(m) If the home study for a third-party adoption has not occurred prior to the date of placement, then the third party shall, at the time of the filing of the petition for adoption, file a motion with the court seeking an order authorizing placement of such child prior to the completion of the home study. Such motion shall identify the evaluator that the petitioner has selected to perform the home study. The court may waive the requirement of a preplacement home study in cases when a child to be adopted already resides in the prospective adoptive home pursuant to a court order of guardianship, testamentary guardianship, or custody.

(n) The court may grant the motion for placement prior to the completion of a home study if the court finds that such placement is in the best interest of the child.

(o) If the court grants the motion for placement prior to the completion of a home study and authorizes placement of a child prior to the completion of the home study, then:

(1) Such child shall be permitted to remain in the home of the third party with whom the parent or guardian placed such child pending further order of the court;

(2) A copy of the order authorizing placement of such child prior to the completion of the home study shall be delivered to the department and the evaluator selected to perform the home study by the clerk of the court within 15 days of the date of the entry of such order; and

(3) The home study, if not already in process, shall be initiated by the evaluator selected by the petitioner or appointed by the court within ten days of such evaluator's receipt of the court's order. (Code 1981, § 19-8-5, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, § 1; Ga. L. 1999, p. 252, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 503, § 2; Ga. L. 2007, p. 342, §§ 3, 4/HB 497; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 573, §§ 2, 3/SB 172.)

**The 2011 amendment**, effective July 1, 2011, in subsection (a), substituted "his or her rights to such child to that third party for the purpose of enabling that third party to adopt such child" for "his rights to the child to that third person for the purpose of enabling that person to adopt the child" at the end of the first sentence and added the second sentence;

and added subsections (m), (n), and (o). See editor's note for applicability.

**Editor's notes.** — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

## 19-8-10. When surrender or termination of parental rights not required; service on parents in such cases.

### JUDICIAL DECISIONS

#### ANALYSIS

##### SIGNIFICANT FAILURE TO COMMUNICATE OR SUPPORT

###### Significant Failure to Communicate or Support

**Evidence insufficient to show failure to communicate or support.** — Trial court erred in granting a stepfather's adoption petition and in terminating a natural father's parental rights because there was not clear and convincing evidence that the father's failure to communicate with and care for the child was without justifiable cause under O.C.G.A.

§ 19-8-10(b), and the stepfather failed to present any evidence of the father's financial condition during the year prior to the filing of the petition; the mother confirmed that she refused to let the father visit the child, and the stepfather failed to present any evidence contradicting the father's evidence that the father was unable to earn sufficient income because of his back injuries. *Weber v. Livingston*, 309 Ga. App. 665, 710 S.E.2d 864 (2011).

**19-8-12. Notice to biological father; procedure when identity or location of father not known; petition, hearing, and order; when rights of biological father terminated; legitimization of child by father; rights of mother.**

**JUDICIAL DECISIONS**

Cited in *In the Interest of V.B.L.*, 306 Ga. App. 709, 703 S.E.2d 127 (2010).

**19-8-13. Petition; filing and contents; financial disclosures; attorney's affidavit.**

(a) The petition for adoption, duly verified, together with one conformed copy thereof, must be filed with the clerk of the superior court having jurisdiction and shall conform to the following guidelines:

(1) The petition shall set forth:

(A) The name, age, marital status, and place of residence of each petitioner;

(B) The name by which the child is to be known should the adoption ultimately be completed;

(C) The date of birth and the sex of the child;

(D) The date and circumstances of the placement of the child with each petitioner;

(E) Whether the child is possessed of any property and, if so, a full and complete description thereof;

(F) Whether the child has one or both parents or his biological father who is not the legal father living; and

(G) Whether the child has a guardian.

(2) Where the adoption is pursuant to subsection (a) of Code Section 19-8-4 the following shall be provided or attached or its absence explained when the petition is filed:

(A) An affidavit from the department or a child-placing agency stating that all of the requirements of Code Sections 19-8-4 and 19-8-12 have been complied with;

(B) The written consent of the department or agency to the adoption;

(C) A copy of the appropriate form verifying the allegation of compliance with the requirements of Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children; and

(D) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department.

(3) Where the adoption is pursuant to subsection (a) of Code Section 19-8-5, the following shall be provided or attached or its absence explained when the petition is filed:

(A) The written voluntary surrender of each parent or guardian specified in subsection (e) of Code Section 19-8-5;

(B) The written acknowledgment of surrender specified in subsection (f) of Code Section 19-8-5;

(C) The affidavits specified in subsections (g) and (h) of Code Section 19-8-5;

(D) Allegations of compliance with Code Section 19-8-12;

(E) Allegations of compliance with Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children;

(F) The accounting required by subsection (c) of this Code section;

(G) Copies of appropriate certificates or forms verifying allegations contained in the petition as to guardianship or custody of the child, the marriage of each petitioner, the divorce or death of each parent of the child, and compliance with Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children;

(H) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department; and

(I) A copy of the home study report.

(4) Where the adoption is pursuant to subsection (a) of Code Section 19-8-6, the following shall be provided or attached or its absence explained when the petition is filed:

(A) The written voluntary surrender of the parent or guardian specified in subsection (e) of Code Section 19-8-6;

(B) The written acknowledgment of surrender specified in subsection (f) of Code Section 19-8-6;

(C) The affidavits specified in subsections (g) and (h) of Code Section 19-8-6;

(D) The consent specified in subsection (j) of Code Section 19-8-6;

(E) Allegations of compliance with Code Section 19-8-12;

(F) Copies of appropriate certificates verifying allegations contained in the petition as to guardianship of the child sought to be adopted, the birth of the child sought to be adopted, the marriage of each petitioner, and the divorce or death of each parent of the child sought to be adopted; and

(G) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department.

(5) Where the adoption is pursuant to subsection (a) of Code Section 19-8-7, the following shall be provided or attached or its absence explained when the petition is filed:

(A) The written voluntary surrender of each parent specified in subsection (e) of Code Section 19-8-7;

(B) The written acknowledgment of surrender specified in subsection (f) of Code Section 19-8-7;

(C) The affidavits specified in subsections (g) and (h) of Code Section 19-8-7;

(D) Allegations of compliance with Code Section 19-8-12;

(E) Copies of appropriate certificates or forms verifying allegations contained in the petition as to guardianship of the child sought to be adopted, the birth of the child sought to be adopted, the marriage of each petitioner, and the divorce or death of each parent of the child sought to be adopted; and

(F) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department.

(6)(A) Where the adoption is pursuant to Code Section 19-8-8, the following shall be provided or attached or its absence explained when the petition is filed:

(i) A certified copy of the final decree of adoption from the foreign country along with a verified English translation. The translator shall provide a statement regarding his qualification to render the translation, his complete name, and his current address. Should the current address be a temporary one, his permanent address shall also be provided;

(ii) A verified copy of the visa granting the child entry to the United States;

(iii) A certified copy along with a verified translation of the child's amended birth certificate or registration showing each petitioner as parent; and

(iv) A copy of the home study which was completed for United States Immigration and Naturalization Service.

(B) It is not necessary to file copies of surrenders or termination on any parent or biological father who is not the legal father when the petition is filed pursuant to paragraph (1) of Code Section 19-8-8.

(7) Where Code Section 19-8-10 is applicable, parental rights need not be surrendered or terminated prior to the filing of the petition; but any petitioner shall allege facts demonstrating the applicability of Code Section 19-8-10 and shall allege compliance with subsection (c) of Code Section 19-8-10.

(8) If the petition is filed in a county other than that of the petitioners' residence, the reason therefor must also be set forth in the petition.

(b) At the time of filing the petition, the petitioner shall deposit with the clerk the deposit required by Code Section 9-15-4; the fees shall be those established by Code Sections 15-6-77 and 15-6-77.1.

(c) Each petitioner in any proceeding for the adoption of a minor pursuant to the provisions of Code Section 19-8-5 shall file with the petition, in a manner acceptable to the court, a report fully accounting for all disbursements of anything of value made or agreed to be made, directly or indirectly, by, on behalf of, or for the benefit of the petitioner in connection with the adoption, including, but not limited to, any expenses incurred in connection with:

(1) The birth of the minor;

(2) Placement of the minor with the petitioner;

(3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and

(4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person.

(d) Every attorney for a petitioner in any proceeding for the adoption of a minor pursuant to the provisions of Code Section 19-8-5 shall file, in a manner acceptable to the court, before the decree of adoption is entered, an affidavit detailing all sums paid or promised to that attorney, directly or indirectly, from whatever source, for all services of any nature rendered or to be rendered in connection with the adoption; provided, however, that if the attorney received or is to receive less than \$500.00, the affidavit need only state that fact.

(e) Any report made under this Code section must be signed and verified by the individual making the report.

(f) Whenever a petitioner is a blood relative of the child to be adopted and a grandparent other than the petitioner has visitation rights to the child granted pursuant to Code Section 19-7-3, the petitioner shall cause a copy of the petition for adoption to be served upon the grandparent with the visitation rights or upon such person's counsel of record.

(g) Notwithstanding the provisions of Code Sections 19-8-5 and 19-8-7 and this Code section which require obtaining and attaching a written voluntary surrender and acknowledgment thereof and affidavits of the legal mother and a representative of the petitioner, where the adoption is sought under subsection (a) of Code Section 19-8-5 or 19-8-7 following the termination of parental rights and the placement of the child by the juvenile court pursuant to paragraph (1) of subsection (a) of Code Section 15-11-103, obtaining and attaching to the petition a certified copy of the order terminating parental rights of the parent shall take the place of obtaining and attaching those otherwise required surrenders, acknowledgments, and affidavits.

(h) A petition for adoption regarding a child or children who have a living biological father who is not the legal father and who has not surrendered his rights to the child or children shall include a certificate from the putative father registry disclosing the name, address, and social security number of any registrant acknowledging paternity of the child or children pursuant to subparagraph (d)(2)(A) of Code Section 19-11-9 or indicating the possibility of paternity of a child of the child's mother pursuant to subparagraph (d)(2)(B) of Code Section 19-11-9 for a period beginning no later than two years immediately prior to the child's date of birth. Such certificate shall indicate a search of the registry on or after the earliest of the following:

- (1) The date of the mother's surrender of parental rights;
- (2) The date of entry of the court order terminating the mother's parental rights;
- (3) The date of the mother's consent to adoption pursuant to Code Section 19-8-6; or
- (4) The date of the filing of the petition for adoption, in which case the certificate may be filed as an amendment to the petition for adoption.

Such certificate shall include a statement that the registry is current as of the earliest date listed in paragraphs (1) through (4) of this subsection, or as of a specified date that is later than the earliest such date. (Code 1981, § 19-8-13, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, §§ 4, 5; Ga. L. 1992, p. 6, § 19; Ga. L. 1997, p. 1686, § 6; Ga. L. 2000, p. 20, § 13; Ga. L. 2011, p. 573, § 4/SB 172.)

**The 2011 amendment**, effective July 1, 2011, in subparagraph (a)(3)(F), deleted “the provisions of” preceding “subsection (c)”; in subparagraph (a)(3)(G), inserted “or custody”, deleted “sought to be adopted” following “of the child” twice, and deleted “and” from the end; in subparagraph (a)(3)(H), substituted “; and” for a period at the end; and added subpara-

graph (a)(3)(I). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

#### **19-8-14. Timing of adoption hearing; required records; filing.**

(a) It is the policy of this state that, in the best interest of the child, uncontested adoption petitions should be heard as soon as possible but not later than 120 days after the date of filing, unless the petitioner has failed to arrange for the court to receive the report required by the provisions of Code Section 19-8-16 or has otherwise failed to provide the court with all exhibits, surrenders, or certificates required by this chapter within that time period. It is the policy of this state that, in contested adoption petitions, the parties shall make every effort to have the petition considered by the court as soon as practical after the date of filing taking into account the circumstances of the petition and the best interest of the child.

(b) Upon the filing of the petition for adoption, accompanied by the filing fee unless such fee is waived, it shall be the responsibility of the clerk to accept the petition as filed.

(c) Upon the filing of the petition for adoption the court shall fix a date upon which the petition shall be considered, which date shall be not less than 45 days from the date of the filing of the petition.

(d) Notwithstanding the provisions of subsections (a) and (c) of this Code section, it shall be the petitioner’s responsibility to request that the court hear the petition on a date that allows sufficient time for fulfillment of notice requirements of Code Section 19-8-10 and Code Section 19-8-12, where applicable.

(e) In the best interest of the child the court may hear the petition less than 45 days from the date of filing upon a showing by the petitioner that either no further notice is required or that any statutory requirement of notice to any person will be fulfilled at an earlier date, and provided that any report required by Code Section 19-8-16 has been completed or will be completed at an earlier date.

(f) The court in the child’s best interest may grant such expedited hearings or continuances as may be necessary for completion of applicable notice requirements, investigations, a home study, and reports or for other good cause shown.

(g) Copies of the petition and all documents filed in connection therewith, including, but not limited to, the order fixing the date upon which the petition shall be considered, and all exhibits, surrenders, or certificates required by this chapter, shall be forwarded by the clerk to the department within 15 days after the date of the filing of the petition for adoption.

(h) Copies of the petition, the order fixing the date upon which the petition shall be considered, and all exhibits, surrenders, or certificates required by this chapter shall be forwarded by the clerk to the child-placing agency or other agent appointed by the court pursuant to the provisions of Code Section 19-8-16 within 15 days after the filing of the petition for adoption, together with a request that a report and investigation be made as required by law.

(i) Copies of all motions, amendments, and other pleadings filed and of all orders entered in connection with the petition for adoption shall be forwarded by the clerk to the department within 15 days after such filing or entry. (Code 1981, § 19-8-14, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, § 6; Ga. L. 2003, p. 503, § 4; Ga. L. 2011, p. 573, § 5/SB 172.)

**The 2011 amendment**, effective July 1, 2011, inserted “, a home study” near the end of subsection (f); and, in subsection (g), inserted “and all documents filed in connection therewith, including, but not limited to”, inserted a comma near the middle, and inserted “the date of” near the end. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

## **19-8-18. Hearing and decree of adoption; district attorney to be directed to review inducement of violations; disposition of child on denial of petition.**

### **JUDICIAL DECISIONS**

**Unmarried individuals may adopt.** — Trial court abused the court’s discretion by denying a foster parent’s petition to adopt the foster child on the ground that placing the child with the foster parent, who was not married to the individual with whom the foster parent lived, violated the state’s public policy because all of the evidence showed that the adoption would be in the child’s best interest, and the trial court failed to apply the law as written and determine whether it was in

the child’s best interest to allow the adoption; all of the witnesses, including the guardian ad litem the trial court appointed to represent the child’s interests and the Department of Family and Children’s Services adoption specialist, testified that the adoption was in the child’s best interest and that to remove the child from the only family the child had ever known would be devastating to the child, and O.C.G.A. § 19-8-3 clearly did not prohibit the adoption because the General

Assembly did not prohibit unmarried couples from adopting. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

#### **Construction with other law.**

Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term “parent” to only “natural parents” or “biological parents,” there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state interference; in construing § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored, and the clear intent of the adoption

statute is to give adoptive parents full legal rights. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), aff’d, 290 Ga. 361, 720 S.E.2d 634 (2012).

**Public policy of the state is to consider best interest of the child.** — Public policy of the state as enunciated by the General Assembly is to consider the best interest of the child when determining whether he or she should be adopted, O.C.G.A. § 19-8-18(b); in stating that marriage is encouraged, O.C.G.A. § 19-3-6 forbids most efforts to restrain or discourage marriage by contract, condition, limitation, or otherwise, and § 19-3-6 has nothing to do with the standards the courts must apply in determining whether to allow a child to be adopted. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

### **19-8-19. Effect of decree of adoption.**

#### **JUDICIAL DECISIONS**

##### **Grandparents' visitation precluded after child adopted by stepfather.**

Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term “parent” to only “natural parents” or “biological parents,” there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state interference; in construing § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored, and the clear intent of the adoption statute is to give adoptive parents full legal rights. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), aff’d, 290 Ga. 361, 720 S.E.2d 634 (2012).

##### **Grandparents' visitation rights precluded when child adopted by stepfa-**

**ther.** — Term “parents” in O.C.G.A. § 19-7-3(b) did not exclude a child’s adoptive parent; therefore, because a child was living with the child’s mother and adoptive father, who were not separated, the child’s natural grandparents had no right to file an original action for visitation with the child under the statute. Upon their son’s termination of his parental rights to the child, the grandparents became strangers to the child, pursuant to O.C.G.A. § 19-8-19. *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

**Incest not applicable between adopted siblings.** — Trial court erred when the court denied the defendant’s motion to quash the count of an indictment charging the defendant with incest because the defendant did not commit incest since the defendant’s adoptive sister was not a whole blood or half blood sibling; the incest statute does not prohibit sexual intercourse between a brother and an adoptive sister not related by blood. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

**19-8-23. Where records of adoption kept; examination by parties and attorneys; use of information by agency and department.**

(a) The original petition, all amendments and exhibits thereto, all motions, documents, affidavits, records, and testimony filed in connection therewith, and all decrees or orders of any kind whatsoever, except the original investigation report and background information referred to in Code Section 19-8-20, shall be recorded in a book kept for that purpose and properly indexed; and the book shall be part of the records of the court in each county which has jurisdiction over matters of adoption in that county. All of the records, including the docket book, of the court granting the adoption, of the department, and of the child-placing agency that relate in any manner to the adoption shall be kept sealed and locked. The records may be examined by the parties at interest in the adoption and their attorneys when, after written petition has been presented to the court having jurisdiction and after the department and the appropriate child-placing agency have received at least 30 days' prior written notice of the filing of such petition, the matter has come on before the court in chambers and, good cause having been shown to the court, the court has entered an order permitting such examination. Notwithstanding the foregoing, if the adoptee who is the subject of the records sought to be examined is less than 18 years of age at the time the petition is filed and the petitioner is someone other than one of the adoptive parents of the adoptee, then the department shall provide written notice of such proceedings to the adoptive parents by certified mail or statutory overnight delivery, return receipt requested, at the last address the department has for such adoptive parents and the court shall continue any hearing on the petition until not less than 60 days after the date the notice was sent. Each such adoptive parent shall have the right to appear in person or through counsel and show cause why such records should not be examined. Adoptive parents may provide the department with their current address for purposes of receiving notice under this subsection by mailing that address to:

Office of Adoptions  
Department of Human Services  
Atlanta, Georgia

(b) The department or the child-placing agency may, in its sole discretion, make use of any information contained in the records of the respective department or agency relating to the adoptive parents in connection with a subsequent adoption matter involving the same adoptive parents or to provide notice when required by subsection (a) of this Code section.

(c) The department or the child-placing agency may, in its sole discretion, make use of any information contained in its records on a child when an adoption disrupts after finalization and when such records are required for the permanent placement of such child, or when the information is required by federal law.

(d)(1) Upon the request of a party at interest in the adoption, a child, legal guardian, or health care agent of an adopted person or a provider of medical services to such a party, child, legal guardian, or health care agent when certain information would assist in the provision of medical care, a medical emergency, or medical diagnosis or treatment, the department or child-placing agency shall access its own records on finalized adoptions for the purpose of adding subsequently obtained medical information or releasing nonidentifying medical and health history information contained in its records pertaining to an adopted person or the biological parents or relatives of the biological parents of the adopted person. For purposes of this paragraph, the term "health care agent" has the meaning provided by Code Section 31-32-2.

(2) Upon receipt by the State Adoption Unit of the Division of Family and Children Services of the department or by a child-placing agency of documented medical information relevant to an adoptee, the office or child-placing agency shall use reasonable efforts to contact the adoptive parents of the adoptee if the adoptee is under 18 years of age or the adoptee if he or she is 18 years of age or older and provide such documented medical information to the adoptive parents or the adoptee. The office or child-placing agency shall be entitled to reimbursement of reasonable costs for postage and photocopying incurred in the delivery of such documented medical information to the adoptive parents or adoptee.

(e) Records relating in any manner to adoption shall not be open to the general public for inspection.

(f)(1) Notwithstanding Code Section 19-8-1, for purposes of this subsection, the term:

(A) "Biological parent" means the biological mother or biological father who surrendered that person's rights or had such rights terminated by court order giving rise to the adoption of the child.

(B) "Commissioner" means the commissioner of human services or that person's designee.

(C) "Department" means the Department of Human Services or, when the Department of Human Services so designates, the county department of family and children services which placed for adoption the person seeking, or on whose behalf is sought, information under this subsection.

(D) "Placement agency" means the child-placing agency, as defined in paragraph (3) of Code Section 19-8-1, which placed for adoption the person seeking or on whose behalf is sought information under this subsection.

(2) The department or a placement agency, upon the written request of an adopted person who has reached 18 years of age or upon the written request of an adoptive parent on behalf of that parent's adopted child, shall release to such adopted person or to the adoptive parent on the child's behalf nonidentifying information regarding such adopted person's biological parents and information regarding such adopted person's birth. Such information may include the date and place of birth of the adopted person and the genetic, social, and health history of the biological parents. No information released pursuant to this paragraph shall include the name or address of either biological parent or the name or address of any relative by birth or marriage of either biological parent.

(3)(A) The department or a placement agency upon written request of an adopted person who has reached 21 years of age shall release to such adopted person the name of such person's biological parent if:

(i) The biological parent whose name is to be released has submitted unrevoked written permission to the department or the placement agency for the release of that parent's name to the adopted person;

(ii) The identity of the biological parent submitting permission for the release of that parent's name has been verified by the department or the placement agency; and

(iii) The department or the placement agency has records pertaining to the finalized adoption and to the identity of the biological parent whose name is to be released.

(B) If the adopted person is deceased and leaves a child, such child, upon reaching 21 years of age, may seek the name and other identifying information concerning his or her grandparents in the same manner as the deceased adopted person and subject to the same procedures contained in this Code section.

(4)(A) If a biological parent has not filed written unrevoked permission for the release of that parent's name to the adopted child, the department or the placement agency, within six months of receipt of the written request of the adopted person who has reached 21 years of age, shall make diligent effort to notify each biological parent identified in the original adoption proceedings or in other records of the department or the placement agency relative

to the adopted person. For purposes of this subparagraph, "notify" means a personal and confidential contact with each biological parent of the adopted person. The contact shall be by an employee or agent of the placement agency which processed the pertinent adoption or by other agents or employees of the department. The contact shall be evidenced by the person who notified each parent certifying to the department that each parent was given the following information:

- (i) The nature of the information requested by the adopted person;
- (ii) The date of the request of the adopted person;
- (iii) The right of each biological parent to file an affidavit with the placement agency or the department stating that such parent's identity should not be disclosed;
- (iv) The right of each biological parent to file a consent to disclosure with the placement agency or the department; and
- (v) The effect of a failure of each biological parent to file either a consent to disclosure or an affidavit stating that the information in the sealed adoption file should not be disclosed.

(B) If a biological parent files an unrevoked consent to the disclosure of that parent's identity, such parent's name shall be released to the adopted person who has requested such information as authorized by this paragraph.

(C) If, within 60 days of being notified by the department or the placement agency pursuant to subparagraph (A) of this paragraph, a biological parent has filed with the department or placement agency an affidavit objecting to such release, information regarding that biological parent shall not be released.

(D)(i) If six months after receipt of the adopted person's written request the placement agency or the department has either been unable to notify a biological parent identified in the original adoption record or has been able to notify a biological parent identified in the original adoption record but has not obtained a consent to disclosure from the notified biological parent, then the identity of a biological parent may only be disclosed as provided in division (ii) or (iii) of this subparagraph.

(ii) The adopted person who has reached 21 years of age may petition the Superior Court of Fulton County to seek the release of the identity of each of that person's biological parents from the department or placement agency. The court shall grant the petition if the court finds that the department or placement

agency has made diligent efforts to locate each biological parent pursuant to this subparagraph either without success or upon locating a biological parent has not obtained a consent to disclosure from the notified biological parent and that failure to release the identity of each biological parent would have an adverse impact upon the physical, mental, or emotional health of the adopted person.

(iii) If it is verified that a biological parent of the adopted person is deceased, the department or placement agency shall be authorized to disclose the name and place of burial of the deceased biological parent, if known, to the adopted person seeking such information without the necessity of obtaining a court order.

(5)(A) Upon written request of an adopted person who has reached 21 years of age or a person who has reached 21 years of age and who is the sibling of an adopted person, the department or a placement agency shall attempt to identify and notify the siblings of the requesting party, if such siblings are at least 18 years of age. Upon locating the requesting party's sibling, the department or the placement agency shall notify the sibling of the inquiry. Upon the written consent of a sibling so notified, the department or the placement agency shall forward the requesting party's name and address to the sibling and, upon further written consent of the sibling, shall divulge to the requesting party the present name and address of the sibling. If a sibling cannot be identified or located, the department or placement agency shall notify the requesting party of such circumstances but shall not disclose any names or other information which would tend to identify the sibling. If a sibling is deceased, the department or placement agency shall be authorized to disclose the name and place of burial of the deceased sibling, if known, to the requesting party without the necessity of obtaining a court order.

(B)(i) If six months after receipt of the written request from an adopted person who has reached 21 years of age or a person who has reached 21 years of age and who is the sibling of an adopted person, the placement agency or the department has either been unable to notify one or more of the siblings of the requesting party or has been able to notify a sibling of the requesting party but has not obtained a consent to disclosure from the notified sibling, then the identity of the siblings may only be disclosed as provided in division (ii) of this subparagraph.

(ii) The adopted person who has reached 21 years of age or a person who has reached 21 years of age and who is the sibling of an adopted person may petition the Superior Court of Fulton

County to seek the release of the last known name and address of each of the siblings of the petitioning sibling, that are at least 18 years of age, from the department or placement agency. The court shall grant the petition if the court finds that the department or placement agency has made diligent efforts to locate such siblings pursuant to subparagraph (A) of this paragraph either without success or upon locating one or more of the siblings has not obtained a consent to disclosure from all the notified siblings and that failure to release the identity and last known address of said siblings would have an adverse impact upon the physical, mental, or emotional health of the petitioning sibling.

(C) If the adopted person is deceased and leaves a child, such child, upon reaching 21 years of age, may obtain the name and other identifying information concerning the siblings of his or her deceased parent in the same manner that the deceased adopted person would be entitled to obtain such information pursuant to the procedures contained in this Code section.

(6)(A) Upon written request of a biological parent of an adopted person who has reached 21 years of age, the department or a placement agency shall attempt to identify and notify the adopted person. Upon locating the adopted person, the department or the placement agency shall notify the adopted person of the inquiry. Upon the written consent of the adopted person so notified, the department or the placement agency shall forward the biological parent's name and address to the adopted person and, upon further written consent of the adopted person, shall divulge to the requesting biological parent the present name and address of the adopted person. If the adopted person is deceased, the department or placement agency shall be authorized to disclose the name and place of burial of the deceased adopted person, if known, to the requesting biological parent without the necessity of obtaining a court order.

(B)(i) If six months after receipt of the written request from a biological parent of an adopted person who has reached 21 years of age the placement agency or the department has either been unable to notify the adopted person or has been able to notify the adopted person but has not obtained a consent to disclosure from the notified adopted person, then the identity of the adopted person may only be disclosed as provided in division (ii) of this subparagraph.

(ii) The biological parent of an adopted person who has reached 21 years of age may petition the Superior Court of Fulton County to seek the release of the last known name and

address of the adopted person from the department or placement agency. The court shall grant the petition if the court finds that the department or placement agency has made diligent efforts to locate such adopted person pursuant to subparagraph (A) of this paragraph either without success or upon locating the adopted person has not obtained a consent to disclosure from the adopted person and that failure to release the identity and last known address of said adopted person would have an adverse impact upon the physical, mental, or emotional health of the petitioning biological parent.

(C) If the biological parent is deceased, a parent or sibling of the deceased biological parent, or both, may obtain the name and other identifying information concerning the adopted person in the same manner that the deceased biological parent would be entitled to obtain such information pursuant to the procedures contained in this Code section.

(7) If an adoptive parent or the sibling of an adopted person notifies the department or placement agency of the death of an adopted person, the department or placement agency shall add information regarding the date and circumstances of the death to its records so as to enable it to share such information with a biological parent or sibling of the adopted person if they make an inquiry pursuant to the provisions of this Code section.

(8) If a biological parent or parent or sibling of a biological parent notifies the department or placement agency of the death of a biological parent or a sibling of an adopted person, the department or placement agency shall add information regarding the date and circumstances of the death to its records so as to enable it to share such information with an adopted person or sibling of the adopted person if he or she makes an inquiry pursuant to the provisions of this Code section.

(9) The Office of Adoptions within the department shall maintain a registry for the recording of requests by adopted persons for the name of any biological parent, for the recording of the written consent or the written objections of any biological parent to the release of that parent's identity to an adopted person upon the adopted person's request, and for nonidentifying information regarding any biological parent which may be released pursuant to paragraph (2) of this subsection. The department and any placement agency which receives such requests, consents, or objections shall file a copy thereof with that office.

(10) The department or placement agency may charge a reasonable fee to be determined by the department for the cost of conducting any search pursuant to this subsection.

(11) Nothing in this subsection shall be construed to require the department or placement agency to disclose to any party at interest, including but not limited to an adopted person who has reached 21 years of age, any information which is not kept by the department or the placement agency in its normal course of operations relating to adoption.

(12) Any department employee or employee of any placement agency who releases information or makes authorized contacts in good faith and in compliance with this subsection shall be immune from civil or criminal liability for such release of information or authorized contacts.

(13) Information authorized to be released pursuant to this subsection may be released under the conditions specified in this subsection notwithstanding any other provisions of law to the contrary.

(14) A placement agency which demonstrates to the department by clear and convincing evidence that the requirement that such agency search for or notify any biological parent, sibling, or adopted person under subparagraph (A) of paragraph (4) of this subsection or subparagraph (A) of paragraph (5) of this subsection or subparagraph (A) of paragraph (6) of this subsection will impose an undue hardship upon that agency shall be relieved from that responsibility, and the department shall assume that responsibility upon such finding by the department of undue hardship. The department's determination under this subsection shall be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(15) Whenever this subsection authorizes both the department and a placement agency to perform any function or requires the placement agency to perform any function which the department is also required to perform, the department or agency may designate an agent to perform that function and in so performing it the agent shall have the same authority, powers, duties, and immunities as an employee of the department or placement agency has with respect to performing that function. (Code 1981, § 19-8-23, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, §§ 9, 10; Ga. L. 1997, p. 1686, § 7; Ga. L. 1999, p. 252, § 9; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 503, §§ 6, 7, 8; Ga. L. 2004, p. 631, § 19; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2011, p. 573, § 6/SB 172.)

**The 2011 amendment**, effective July 1, 2011, rewrote paragraph (d)(1); and in paragraph (d)(2), in the first sentence, substituted "State Adoption Unit of the Division of Family and Children Services" for "Office of Adoptions" near the begin-

ning and inserted "if the adoptee is under 18 years of age" near the middle. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code

section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

**19-8-26. How surrender of parental rights executed; how and when surrender may be withdrawn; forms.**

(a) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-4 shall conform substantially to the following form:

**SURRENDER OF RIGHTS**  
**FINAL RELEASE FOR ADOPTION**  
**NOTICE TO PARENT OR GUARDIAN:**

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

---

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child) on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name of child-placing agency or Department of Human Services, as applicable) and promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name of child-placing agency or Department of Human Services, as applicable) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

Furthermore, I hereby agree that the (insert name of child-placing agency or Department of Human Services, as applicable) may seek for the child a legal adoption by such person or persons as may be chosen by the (insert name of child-placing agency or Department of Human Services, as applicable) or its authorized agents, without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law the Department of Human Services or the child-placing agency is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with such department or agency in the conduct of its investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of child-placing agency or Department of Human Services, as applicable) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_ (SEAL)  
(Parent or guardian)

---

Unofficial witness

---

Notary public

(b) Reserved.

(c) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-5 shall conform substantially to the following form:

**SURRENDER OF RIGHTS**

**FINAL RELEASE FOR ADOPTION**

**NOTICE TO PARENT OR GUARDIAN:**

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child), on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name, surname not required, of each person to whom surrender is made), PROVIDED that each such person is named as petitioner in a petition for adoption of the child filed in accordance with Article 1 of Chapter 8 of Title 19 of the Official Code of Georgia Annotated within 60 days from the date hereof. Furthermore, I promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name, surname not required, of each person to whom surrender is made) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

It is also my wish, intent, and purpose that if each such person is not named as petitioner in a petition for adoption as provided for above within the 60 day period, other than for excusable neglect, or, if said petition for adoption is filed within 60 days but the adoption action is dismissed with prejudice or otherwise concluded without an order declaring the child to be the adopted child of each such person, then I do hereby surrender the child as follows:

(Mark one of the following as chosen)

I wish the child returned to me, and I expressly acknowledge that this provision applies only to the limited circumstance that the child is not adopted by the person or persons designated herein and further that this provision does not impair the validity, absolute finality, or totality of this surrender under any circumstance other than the failure of the designated person or persons to adopt the child and that no other provision of this surrender impairs the validity, absolute finality, or totality of this surrender once the revocation period has elapsed; or

I surrender the child to (insert name of designated licensed child-placing agency), a licensed child-placing agency, for placement for adoption; or

I surrender the child to the Department of Human Services, as provided by subsection (k) of Code Section 19-8-5, for placement for adoption; and (insert name of designated licensed child-placing agency) or the Department of Human Services may petition the superior court for custody of the child in accordance with the terms of this surrender.

Furthermore, I hereby agree that the child is to be adopted either by each person named above or by any other such person as may be chosen by the (insert name of designated licensed child-placing agency) or the Department of Human Services and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law an evaluator is required to conduct and provide to the court a home study and make recommendations to the court regarding the qualification of each person named above to adopt a child concerning the circumstances of placement of my child for adoption. I hereby agree to cooperate fully with such investigations.

Furthermore, I understand that under Georgia law, an agent appointed by the court is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child, and I hereby agree to cooperate fully with such agent in the conduct of this investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of agent of each person to whom surrender is made) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; provided, however, that if the tenth day falls on a Saturday, Sunday, or legal holiday, then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_ (SEAL)  
(Parent or guardian)

\_\_\_\_\_  
Unofficial witness

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary public (SEAL)

My commission expires \_\_\_\_\_.

(d) The surrender of rights by a biological father who is not the legal father of the child pursuant to paragraph (2) of subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall conform substantially to the following form:

### SURRENDER OF RIGHTS

### FINAL RELEASE FOR ADOPTION

#### NOTICE TO ALLEGED BIOLOGICAL FATHER:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

---

I, the undersigned, alleged biological father of a (male) (female) child, born (insert name of child) to (insert name of mother) on (insert birthdate of child), being solicitous that said child should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, do hereby surrender the child. I promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits provided to the child through adoption, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all control over the child.

Furthermore, I hereby agree that the child is to be adopted and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law an agent appointed by the court is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with the agent appointed by the court in the conduct of this investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of child-placing agency representative, Department of Human Services

representative, person to whom surrender is made, or petitioner's representative, as appropriate) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_ (SEAL)  
(Alleged biological father)

\_\_\_\_\_  
Unofficial witness

Sworn to and subscribed

before me this \_\_\_\_\_

day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public (SEAL)

My commission expires \_\_\_\_\_.

(e) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-6 or 19-8-7 shall conform substantially to the following form:

#### SURRENDER OF RIGHTS

#### FINAL RELEASE FOR ADOPTION

#### NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

\_\_\_\_\_  
I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child), on (insert birthdate of child), should

receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name of each person to whom surrender is made) and promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name of each person to whom surrender is made) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

Furthermore, I hereby agree that (insert name of each person to whom surrender is made) may initiate legal proceedings for the legal adoption of the child without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law the Department of Human Services may be required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with the department in the conduct of its investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of each person to whom surrender is made) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
(SEAL)  
(Parent or guardian)

Unofficial witness

---

Notary public

(f) The pre-birth surrender of rights by a biological father who is not the legal father of the child pursuant to paragraph (3) of subsection (e) of Code Section 19-8-4, 19-8-5, or 19-8-7 shall conform substantially to the following form:

**PRE-BIRTH SURRENDER OF RIGHTS**

**FINAL RELEASE FOR ADOPTION**

**NOTICE TO ALLEGED BIOLOGICAL FATHER**

This is an important legal document and by signing it you are surrendering any and all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You have the right to wait to execute a Surrender of Rights Final Release for Adoption after the child is born, but by signing this document you are electing to surrender your rights prior to the birth of this child. You are to receive a copy of this document and as explained below have the right to withdraw your pre-birth surrender within ten days from the date you sign it.

---

I, the undersigned, understand that I have been named by \_\_\_\_\_, the mother of the child expected to be born in \_\_\_\_\_ (city) \_\_\_\_\_ (county) \_\_\_\_\_ (state) on or about the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year), as the biological father or possible biological father of her child. I further understand that the mother wishes to place this child for adoption.

To the best of my knowledge and belief, the child has not been born as of the date I am signing this pre-birth surrender; however, if in fact the child has been born, this surrender shall have the same effect as if it were a surrender executed following the birth of the child.

I understand that by signing this document I am not admitting that I am the biological father of this child, but if I am, I hereby agree that adoption is in this child's best interest. I consent to adoption of this child by any person chosen by the child's mother or by any public or private child-placing agency without further notice to me. I expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

I understand that I have the option to wait until after the child is born to execute a surrender of my rights (with a corresponding ten-day right of withdrawal) and, further, that by executing this document I am electing instead to surrender my rights before the child's birth.

I further understand that execution of this document does not fully and finally terminate my responsibilities until a final order of adoption is entered. I understand that if the child is not adopted, legal proceedings can be brought to establish paternity, and I may become liable for financial obligations related to the birth and support of this child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand that I may only withdraw this pre-birth surrender by giving written notice, delivered in person or by statutory overnight delivery or registered mail, return receipt requested, to \_\_\_\_\_ within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; that, however, if the tenth day falls on a Saturday, Sunday, or legal holiday, then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and that it may NOT be withdrawn thereafter.

If prior to my signing this pre-birth surrender I have registered on Georgia's putative father registry then if I do not withdraw this surrender within the time permitted, I waive the notice I would be entitled to receive pursuant to the provisions of Code Section 19-8-12 of the Official Code of Georgia Annotated because of my registration on the putative father registry.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this document and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ (SEAL)  
Alleged biological father

---

Unofficial Witness

Sworn to and subscribed  
before me on this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

---

Notary Public

Seal

My commission expires: \_\_\_\_\_.

(g) The acknowledgment of surrender of rights pursuant to subsection (f) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall conform substantially to the following form:

ACKNOWLEDGMENT OF SURRENDER  
OF RIGHTS

By execution of this paragraph, the undersigned expressly acknowledges:

- (A) That I have read the accompanying SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION relating to said minor child born (insert name of child), a (male) (female) on (insert birthdate of child);
- (B) That I understand that this is a full, final, and complete surrender, release, and termination of all of my rights to the child;
- (C) That I have the unconditional right to revoke the surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of each person or entity to whom surrender is made) not later than ten days from the date of the surrender and that after such ten-day period I shall have no right to revoke the surrender;
- (D) That the ten days shall be counted consecutively beginning with the day immediately following the date the surrender is executed; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday;
- (E) That I have read the accompanying surrender and received a copy thereof;
- (F) That any and all questions regarding the effect of said surrender and its provisions have been satisfactorily explained to me;
- (G) That I have been afforded an opportunity to consult with counsel of my choice prior to execution of the surrender; and
- (H) That the surrender of my rights has been knowingly, intentionally, freely, and voluntarily made by me.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(SEAL)  
(Parent, guardian, or biological father)

\_\_\_\_\_  
Unofficial witness

\_\_\_\_\_  
Notary public

(h) The affidavit of a legal mother required by subsection (g) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall meet the following requirements:

(1) The affidavit shall set forth:

- (A) Her name;
- (B) Her relationship to the child;
- (C) Her age;
- (D) Her marital status;
- (E) The identity and last known address of any spouse or former spouse;
- (F) The identity, last known address, and relationship to the mother of the biological father of her child, provided that the mother shall have the right not to disclose the name and address of the biological father of her child should she so desire;
- (G) Whether or not the biological father of the child has lived with the child, contributed to its support, provided for the mother's support or medical care during her pregnancy or during her hospitalization for the birth of the child, or made an attempt to legitimate the child; and
- (H) All financial assistance received by or promised her either directly or indirectly, from whatever source, in connection with her pregnancy, the birth of the child, or the placement or arranging for the placement of the child for adoption (including the date, amount or value, description, payor, and payee), provided that financial assistance provided directly by the mother's husband, mother, father, sister, brother, aunt, uncle, grandfather, or grandmother need not be detailed and instead the mother need only state the nature of the assistance received; and

(2) The affidavit shall conform substantially to the following form:

#### MOTHER'S AFFIDAVIT

#### NOTICE TO MOTHER:

This is an important legal document which deals with your child's right to have its father's rights properly determined. If you decline to disclose the name and address of the biological father of your child, understand that you may be required to appear in court to explain your refusal and that your name may be used in connection with the publication of notice to the biological father. Understand that you are providing this affidavit under oath and

that the information provided will be held in strict confidence and will be used only in connection with the adoption of your child.

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who, after having been sworn, deposes and says as follows:

That my name is \_\_\_\_\_.

That I am the mother of a (male) (female) child born (insert name of child) in the State of \_\_\_\_\_, County of \_\_\_\_\_ on (insert birthdate of child).

That I am \_\_\_\_\_ years of age, having been born in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_.

That my social security account number is \_\_\_\_\_.

That my marital status at the time of the conception of my child was (check the status and complete the appropriate information):

Single, never having been married.

Separated but not legally divorced; the name of my spouse is \_\_\_\_\_; his last known address is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; we have been separated since \_\_\_\_\_; we last had sexual relations on \_\_\_\_\_.

Divorced; the name of my previous spouse is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; his last known address is \_\_\_\_\_; divorce granted in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_.

Legally married; the name of my spouse (was) (is) \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; and his last known address is \_\_\_\_\_.

Married through common-law marriage relationship prior to January 1, 1997; the name of my spouse (was) (is) \_\_\_\_\_; his last known address is \_\_\_\_\_; our relationship began in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_.

Widowed; the name of my deceased spouse was \_\_\_\_\_; we were married in the State of \_\_\_\_\_.

\_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; and he died on \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_.

That my name and marital status at the time of the birth of my child was (check the status and complete the appropriate information):

Name \_\_\_\_\_

Single, never having been married.

Separated, but not legally divorced; the name of my spouse (was) (is) \_\_\_\_\_; his last known address is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; we have been separated since \_\_\_\_\_; we last had sexual relations on \_\_\_\_\_.

Divorced; the name of my former spouse is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; his last known address is \_\_\_\_\_; divorce granted in the State of \_\_\_\_\_, County of \_\_\_\_\_.

Legally Married; the name of my spouse (was) (is) \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_ on \_\_\_\_\_; and his last known address is \_\_\_\_\_.

Married through common-law relationship prior to January 1, 1997; the name of my spouse (was) (is) \_\_\_\_\_; his last known address is \_\_\_\_\_; our relationship began in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_.

Widowed; the name of my deceased spouse was \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; and he died on \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_.

That the name of the biological father of my child is (complete appropriate response):

Known to me and is (\_\_\_\_\_);

Known to me but I expressly decline to identify him because \_\_\_\_\_; or

Unknown to me because

---

---

That the last known address of the biological father of my child is (complete appropriate response):

Known to me and is \_\_\_\_\_;

Known to me but I expressly decline to provide his address because \_\_\_\_\_; or

Unknown to me because

---

---

That, to the best of my knowledge, I (am) (am not) of American Indian heritage. If so:

(A) The name of my American Indian tribe is \_\_\_\_\_ and the percentage of my American Indian blood is \_\_\_\_\_ percent.

(B) My relatives with American Indian blood are:

---

---

---

(C) I (am) (am not) a member of an American Indian tribe. If so, the name of the tribe is \_\_\_\_\_.

(D) I (am) (am not) registered with an American Indian tribal registry. If so, the American Indian tribal registry is: \_\_\_\_\_ and my registration or identification number is: \_\_\_\_\_.

(E) A member of my family (is) (is not) a member of an American Indian tribe. If so, the name of each such family member is: \_\_\_\_\_ and the name of the corresponding American Indian tribe is: \_\_\_\_\_.

(F) A member of my family (is) (is not) registered with an American Indian tribal registry. If so, the name of each such family member is: \_\_\_\_\_ and the name of the corresponding American Indian tribal registry is: \_\_\_\_\_ and their corresponding registration or identification numbers are: \_\_\_\_\_.

That to the best of my knowledge, the biological father (is) (is not) of American Indian heritage. If so:

(A) The name of his American Indian tribe is \_\_\_\_\_ and the percentage of his American Indian blood is \_\_\_\_\_ percent.

(B) His relatives with American Indian blood are:

---

---

---

(C) He (is) (is not) a member of an American Indian tribe. If so, the name of the tribe is: \_\_\_\_\_.

(D) He (is) (is not) registered with an American Indian tribal registry. If so, the American Indian tribal registry is: \_\_\_\_\_ and his registration or identification number is: \_\_\_\_\_.

That the date of birth of the biological father (was \_\_\_\_\_, \_\_\_\_\_) or (is not known to me).

That the biological father (is) (is not) on active duty in a branch of the United States armed forces. If so:

(A) The branch of his service is (Army) (Navy) (Marine) (Air Force) (Coast Guard).

(B) His rank is \_\_\_\_\_.

(C) His duty station is \_\_\_\_\_.

If applicable, please provide any additional available information regarding his military service.

---

---

---

That the biological father of my child, whether or not identified herein (strike each inappropriate phrase):

(Was) (Was not) married to me at the time this child was conceived;

(Was) (Was not) married to me at any time during my pregnancy with this child;

(Was) (Was not) married to me at the time that this child was born;

(Did) (Did not) marry me after the child was born and recognize the child as his own;

(Has) (Has not) been determined to be the child's father by a final paternity order of a court;

(Has) (Has not) legitimated the child by a final court order;

(Has) (Has not) lived with the child;

(Has) (Has not) contributed to its support;

(Has) (Has not) provided for my support during my pregnancy or hospitalization for the birth of the child;

(Has) (Has not) provided for my medical care during my pregnancy or hospitalization for the birth of the child; and

(Has) (Has not) made any attempt to legitimate the child.

That I have received or been promised the following financial assistance, either directly or indirectly, from whatever source, in connection with my pregnancy, the birth of my child, and its placement for adoption: \_\_\_\_\_.

That I recognize that if I knowingly and willfully make a false statement in this affidavit, I will be guilty of the crime of false swearing.

\_\_\_\_\_  
(Biological mother's signature)

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public (SEAL)  
My Commission Expires \_\_\_\_\_.

(i) The affidavit of an adoptive mother required by subsection (a) of Code Section 19-8-9 for the surrender of her rights shall meet the following requirements:

(1) The affidavit shall set forth:

- (A) Her name;
- (B) Her relationship to the child;
- (C) Her age;
- (D) Her marital status;
- (E) The name and last known address of any spouse at the time the child was adopted and whether any such spouse also adopted the child or was the biological father of the child;

(F) The circumstances surrounding her adoption of her child, including the date the adoption was finalized, the state and county where finalized, and the name and address of the adoption agency, if any; and

(G) All financial assistance received by or promised her either directly or indirectly, from whatever source, in connection with the placement or arranging for the placement of her child for adoption (including the date, amount or value, description, payor, and payee), provided that financial assistance provided directly by the adoptive mother's husband, mother, father, sister, brother, aunt, uncle, grandfather, or grandmother need not be detailed and instead the adoptive mother need only state the nature of the assistance received.

(2) The affidavit shall be in substantially the following form:

#### ADOPTIVE MOTHER'S AFFIDAVIT

##### NOTICE TO MOTHER:

This is an important legal document which deals with your child's right to have its legal father's rights properly terminated. Understand that you are providing this affidavit under oath and that the information provided will be held in strict confidence and will be used only in connection with the adoption of your child.

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who, after having been sworn, deposes and says as follows:

That my name is \_\_\_\_\_.

That I am the adoptive mother of a (male) (female) child born (insert name of child) in the State of \_\_\_\_\_, County of \_\_\_\_\_ on (insert birthdate of child).

That I am \_\_\_\_\_ years of age, having been born in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_.

That my marital status is (check the status and complete the appropriate information):

Single, never having been married.

Separated but not legally divorced; the name of my spouse is \_\_\_\_\_; his last known address is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; we have been separated since \_\_\_\_\_.

\_\_\_\_\_; my spouse (did) (did not) also adopt said child; my spouse (is) (is not) the biological father of said child.

( ) Divorced; the name of my previous spouse is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; his last known address is \_\_\_\_\_; divorce granted in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; my previous spouse (did) (did not) also adopt said child; my previous spouse (is) (is not) the biological father of said child.

( ) Legally married; the name of my spouse is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; his last known address is \_\_\_\_\_; my spouse (did) (did not) also adopt said child; my spouse (is) (is not) the biological father of said child.

( ) Married through common-law marriage relationship; the name of my spouse is \_\_\_\_\_; his address is \_\_\_\_\_; the date and place our relationship began is (date, county, state); my spouse (did) (did not) also adopt said child; my spouse (is) (is not) the biological father of said child.

( ) Widowed; the name of my deceased spouse is \_\_\_\_\_; we were married in the State of \_\_\_\_\_, County of \_\_\_\_\_ on \_\_\_\_\_; he died on \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_; he (did) (did not) also adopt said child; and he (was) (was not) the biological father of said child.

That I adopted my child in the State of \_\_\_\_\_, County of \_\_\_\_\_;

That the final order of adoption was entered on \_\_\_\_\_;

That there (was) (was not) an adoption agency involved in the placement of my child with me for adoption; and if so its name was \_\_\_\_\_,

and its address is \_\_\_\_\_.

That I have received or been promised the following financial assistance, either directly or indirectly, from whatever source, in connection with my child's placement for adoption: \_\_\_\_\_.

That I recognize that if I knowingly and willfully make a false statement in this affidavit, I will be guilty of the crime of false swearing.

\_\_\_\_\_  
(Adoptive mother)

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public

(j) The affidavit of an agency or department representative required by subsection (h) of Code Section 19-8-4 shall conform substantially to the following form:

**AFFIDAVIT OF AGENCY OR  
DEPARTMENT REPRESENTATIVE**

Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who, after having been sworn, deposes and says as follows:

That I am (position) of (department or agency).

That prior to the execution of the accompanying SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION by \_\_\_\_\_, releasing and surrendering all of (his) (her) rights in a (male) (female) minor child born (insert name of child) on (insert birthdate of child), I reviewed with and explained to said individual all of the provisions of the surrender, and particularly the provisions which provide that the surrender is a full surrender of all rights to the child.

That based on my review and explanation to said individual, it is my opinion that said individual knowingly, intentionally, freely, and voluntarily executed the SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION.

\_\_\_\_\_  
(Agency representative)

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public

(k) The affidavit of a petitioner's representative required by subsection (h) of Code Section 19-8-5, 19-8-6, or 19-8-7 shall conform substantially to the following form:

**AFFIDAVIT OF PETITIONER'S REPRESENTATIVE**

Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who, after having been sworn, deposes and says as follows:

That my name is \_\_\_\_\_.

That my address is \_\_\_\_\_.

That prior to the execution of the accompanying SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION by \_\_\_\_\_, releasing and surrendering all of (his) (her) rights in a (male) (female) minor child born (insert name of child) on (insert birthdate of child), I reviewed with and explained to said individual all of the provisions of the surrender, and particularly the provisions which provide that the surrender is a full surrender of all rights to the child.

That based on my review and explanation to said individual, it is my opinion that said individual knowingly, intentionally, freely, and voluntarily executed the SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION.

\_\_\_\_\_  
(Petitioner's representative)

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public

(1) The parental consent to a stepparent adoption required by subsection (j) of Code Section 19-8-6 shall conform substantially to the following form:

#### PARENTAL CONSENT TO STEPPARENT ADOPTION

I, the undersigned, hereby consent that my spouse (insert name of spouse) adopt my (son) (daughter), (insert name of child), whose date of birth is \_\_\_\_\_, and in so doing I in no way relinquish or surrender my parental rights to the child.

I further acknowledge service of a copy of the petition for adoption of the child as filed on behalf of my spouse, and I hereby consent to the granting of the prayers of the petition. I also waive all other and further service and notice of any kind and nature in connection with the proceedings.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Parent)

\_\_\_\_\_  
Unofficial witness

---

### Notary public

(Code 1981, § 19-8-26, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1999, p. 81, § 19; Ga. L. 1999, p. 252, § 10; Ga. L. 2000, p. 136, § 19; Ga. L. 2000, p. 1589, § 4; Ga. L. 2004, p. 631, § 19; Ga. L. 2007, p. 342, § 9/HB 497; Ga. L. 2008, p. 324, § 19/SB 455; Ga. L. 2009, p. 8, § 19/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 800, § 4/HB 388; Ga. L. 2011, p. 573, § 7/SB 172.)

**The 2011 amendment**, effective July 1, 2011, in subsection (c), made minor punctuation changes throughout, inserted “that” in the first sentence of the third paragraph, added the present tenth paragraph, and substituted “provided, however, that” for “however,” in the twelfth paragraph. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

## JUDICIAL DECISIONS

**Cited in** *In the Interest of V.B.L.*, 306 Ga. App. 709, 703 S.E.2d 127 (2010).

## ARTICLE 2

### OPTION OF ADOPTION

#### 19-8-40. Definitions.

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

---

## CHAPTER 9

### CHILD CUSTODY PROCEEDINGS

Article 1	Sec.	
<b>General Provisions</b>		
Sec.		
19-9-1. Parenting plans; requirements for plan.		educational needs; review of visitation rights; grandparent visitation; policy; retention of jurisdiction; attorney’s fees; filing of domestic relations final disposition form; application to military parents.
19-9-3. Discretion of judge in custody disputes; right of child 14 years old or older to select custodial parent; consideration of child’s	19-9-6.	Definitions.

**ARTICLE 1**  
**GENERAL PROVISIONS**

**19-9-1. Parenting plans; requirements for plan.**

(a) Except when a parent seeks emergency relief for family violence pursuant to Code Section 19-13-3 or 19-13-4, in all cases in which the custody of any child is at issue between the parents, each parent shall prepare a parenting plan or the parties may jointly submit a parenting plan. It shall be in the judge's discretion as to when a party shall be required to submit a parenting plan to the judge. A parenting plan shall be required for permanent custody and modification actions and in the judge's discretion may be required for temporary hearings. The final decree in any legal action involving the custody of a child, including modification actions, shall incorporate a permanent parenting plan.

(b)(1) Unless otherwise ordered by the judge, a parenting plan shall include the following:

(A) A recognition that a close and continuing parent-child relationship and continuity in the child's life will be in the child's best interest;

(B) A recognition that the child's needs will change and grow as the child matures and demonstrate that the parents will make an effort to parent that takes this issue into account so that future modifications to the parenting plan are minimized;

(C) A recognition that a parent with physical custody will make day-to-day decisions and emergency decisions while the child is residing with such parent; and

(D) That both parents will have access to all of the child's records and information, including, but not limited to, education, health, extracurricular activities, and religious communications.

(2) Unless otherwise ordered by the judge, or agreed upon by the parties, a parenting plan shall include, but not be limited to:

(A) Where and when a child will be in each parent's physical care, designating where the child will spend each day of the year;

(B) How holidays, birthdays, vacations, school breaks, and other special occasions will be spent with each parent including the time of day that each event will begin and end;

(C) Transportation arrangements including how the child will be exchanged between the parents, the location of the exchange, how the transportation costs will be paid, and any other matter relating to the child spending time with each parent;

(D) Whether supervision will be needed for any parenting time and, if so, the particulars of the supervision;

(E) An allocation of decision-making authority to one or both of the parents with regard to the child's education, health, extracurricular activities, and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution;

(F) What, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity, and religious information regarding the child; and

(G) If a military parent is a party in the case:

(i) How to manage the child's transition into temporary physical custody to a nondeploying parent if a military parent is deployed;

(ii) The manner in which the child will maintain continuing contact with a deployed parent;

(iii) How a deployed parent's parenting time may be delegated to his or her extended family;

(iv) How the parenting plan will be resumed once the deployed parent returns from deployment; and

(v) How divisions (i) through (iv) of this subparagraph serve the best interest of the child.

(c) If the parties cannot reach agreement on a permanent parenting plan, each party shall file and serve a proposed parenting plan on or before the date set by the judge. Failure to comply with filing a parenting plan may result in the judge adopting the plan of the opposing party if the judge finds such plan to be in the best interests of the child. (Orig. Code 1863, § 1685; Code 1868, § 1728; Code 1873, § 1733; Code 1882, § 1733; Civil Code 1895, § 2452; Civil Code 1910, § 2971; Code 1933, § 30-127; Ga. L. 1957, p. 412, § 1; Ga. L. 1962, p. 713, § 1; Ga. L. 1976, p. 1050, § 1; Ga. L. 1978, p. 258, § 2; Ga. L. 1983, p. 632, § 1; Ga. L. 1984, p. 22, § 19; Ga. L. 1986, p. 1000, § 1; Ga. L. 1986, p. 1036, § 1; Ga. L. 1988, p. 1368, § 1; Ga. L. 1992, p. 1656, § 1; Ga. L. 1995, p. 863, § 5; Ga. L. 1999, p. 329, § 3; Ga. L. 2000, p. 1292, § 1; Ga. L. 2007, p. 554, § 5/HB 369; Ga. L. 2011, p. 274, § 2/SB 112.)

**The 2011 amendment**, effective May 11, 2011, in paragraph (b)(2), deleted "and" from the end of subparagraph (b)(2)(E), substituted ";" and" for a period at

the end of subparagraph (b)(2)(F), and added subparagraph (b)(2)(G).

**Editor's notes.** — Ga. L. 2011, p. 274, § 1, not codified by the General Assembly,

provides that: "This Act shall be known and may be cited as the 'Military Parents Rights Act.'"

### 19-9-2. Right of surviving parent to custody of child; discretion of judge.

#### JUDICIAL DECISIONS

**Grandparents seeking custody after surviving parent allegedly murdered the other.** — Trial court erroneously concluded that the grandparents' petition seeking custody of a mother's children failed to state a claim because the custody petition gave fair notice that the grandparents sought custody of the child under O.C.G.A. §§ 19-7-1(b,1) and 19-9-2 based upon the mother's alleged murder of the father; those allegations were sufficient to survive a motion to dismiss. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

**Grandparents seeking custody.** —

Trial court properly determined that collateral estoppel did not bar the grandparents' petition for custody of a mother's children because different issues were actually and necessarily decided in the grandparents' visitation action; in the visitation action, the issues were harm to the child if visitation was not granted and whether visitation would be in the best interest of the children, and in the custody action, the issues were whether the children would suffer physical or emotional harm if custody remained with the mother. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

### 19-9-3. Discretion of judge in custody disputes; right of child 14 years old or older to select custodial parent; consideration of child's educational needs; review of visitation rights; grandparent visitation; policy; retention of jurisdiction; attorney's fees; filing of domestic relations final disposition form; application to military parents.

(a)(1) In all cases in which the custody of any child is at issue between the parents, there shall be no *prima-facie* right to the custody of the child in the father or mother. There shall be no presumption in favor of any particular form of custody, legal or physical, nor in favor of either parent. Joint custody may be considered as an alternative form of custody by the judge and the judge at any temporary or permanent hearing may grant sole custody, joint custody, joint legal custody, or joint physical custody as appropriate.

(2) The judge hearing the issue of custody shall make a determination of custody of a child and such matter shall not be decided by a jury. The judge may take into consideration all the circumstances of the case, including the improvement of the health of the party seeking a change in custody provisions, in determining to whom custody of the child should be awarded. The duty of the judge in all such cases shall be to exercise discretion to look to and determine solely what is for the best interest of the child and what will best promote the child's welfare and happiness and to make his or her award accordingly.

(3) In determining the best interests of the child, the judge may consider any relevant factor including, but not limited to:

- (A) The love, affection, bonding, and emotional ties existing between each parent and the child;
- (B) The love, affection, bonding, and emotional ties existing between the child and his or her siblings, half siblings, and stepsiblings and the residence of such other children;
- (C) The capacity and disposition of each parent to give the child love, affection, and guidance and to continue the education and rearing of the child;
- (D) Each parent's knowledge and familiarity of the child and the child's needs;
- (E) The capacity and disposition of each parent to provide the child with food, clothing, medical care, day-to-day needs, and other necessary basic care, with consideration made for the potential payment of child support by the other parent;
- (F) The home environment of each parent considering the promotion of nurturance and safety of the child rather than superficial or material factors;
- (G) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (H) The stability of the family unit of each of the parents and the presence or absence of each parent's support systems within the community to benefit the child;
- (I) The mental and physical health of each parent;
- (J) Each parent's involvement, or lack thereof, in the child's educational, social, and extracurricular activities;
- (K) Each parent's employment schedule and the related flexibility or limitations, if any, of a parent to care for the child;
- (L) The home, school, and community record and history of the child, as well as any health or educational special needs of the child;
- (M) Each parent's past performance and relative abilities for future performance of parenting responsibilities;
- (N) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child;

(O) Any recommendation by a court appointed custody evaluator or guardian ad litem;

(P) Any evidence of family violence or sexual, mental, or physical child abuse or criminal history of either parent; and

(Q) Any evidence of substance abuse by either parent.

(4) In addition to other factors that a judge may consider in a proceeding in which the custody of a child or visitation or parenting time by a parent is at issue and in which the judge has made a finding of family violence:

(A) The judge shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The judge shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person;

(C) If a parent is absent or relocates because of an act of domestic violence by the other parent, such absence or relocation for a reasonable period of time in the circumstances shall not be deemed an abandonment of the child for the purposes of custody determination; and

(D) The judge shall not refuse to consider relevant or otherwise admissible evidence of acts of family violence merely because there has been no previous finding of family violence. The judge may, in addition to other appropriate actions, order supervised visitation or parenting time pursuant to Code Section 19-9-7.

(5) In all custody cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection for purposes of custody shall be presumptive unless the parent so selected is determined not to be in the best interests of the child. The parental selection by a child who has reached the age of 14 may, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child; provided, however, that such selection may only be made once within a period of two years from the date of the previous selection and the best interests of the child standard shall apply.

(6) In all custody cases in which the child has reached the age of 11 but not 14 years, the judge shall consider the desires and educational needs of the child in determining which parent shall have custody. The judge shall have complete discretion in making this determination, and the child's desires shall not be controlling. The judge shall

further have broad discretion as to how the child's desires are to be considered, including through the report of a guardian ad litem. The best interests of the child standard shall be controlling. The parental selection of a child who has reached the age of 11 but not 14 years shall not, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child. The judge may issue an order granting temporary custody to the selected parent for a trial period not to exceed six months regarding the custody of a child who has reached the age of 11 but not 14 years where the judge hearing the case determines such a temporary order is appropriate.

(7) The judge is authorized to order a psychological custody evaluation of the family or an independent medical evaluation. In addition to the privilege afforded a witness, neither a court appointed custody evaluator nor a court appointed guardian ad litem shall be subject to civil liability resulting from any act or failure to act in the performance of his or her duties unless such act or failure to act was in bad faith.

(8) If requested by any party on or before the close of evidence in a contested hearing, the permanent court order awarding child custody shall set forth specific findings of fact as to the basis for the judge's decision in making an award of custody including any relevant factor relied upon by the judge as set forth in paragraph (3) of this subsection. Such order shall set forth in detail why the court awarded custody in the manner set forth in the order and, if joint legal custody is awarded, a manner in which final decision making on matters affecting the child's education, health, extracurricular activities, religion, and any other important matter shall be decided. Such order shall be filed within 30 days of the final hearing in the custody case, unless extended by order of the judge with the agreement of the parties.

(b) In any case in which a judgment awarding the custody of a child has been entered, on the motion of any party or on the motion of the judge, that portion of the judgment effecting visitation rights between the parties and their child or parenting time may be subject to review and modification or alteration without the necessity of any showing of a change in any material conditions and circumstances of either party or the child, provided that the review and modification or alteration shall not be had more often than once in each two-year period following the date of entry of the judgment. However, this subsection shall not limit or restrict the power of the judge to enter a judgment relating to the custody of a child in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the child. A military parent's absences caused by the performance of his or

her deployments, or the potential for future deployments, shall not be the sole factor considered in supporting a claim of any change in material conditions or circumstances of either party or the child; provided, however, that the court may consider evidence of the effect of a deployment in assessing a claim of any change in material conditions or circumstances of either party or the child.

(c) In the event of any conflict between this Code section and any provision of Article 3 of this chapter, Article 3 shall apply.

(d) It is the express policy of this state to encourage that a child has continuing contact with parents and grandparents who have shown the ability to act in the best interest of the child and to encourage parents to share in the rights and responsibilities of raising their child after such parents have separated or dissolved their marriage or relationship.

(e) Upon the filing of an action for a change of child custody, the judge may in his or her discretion change the terms of custody on a temporary basis pending final judgment on such issue. Any such award of temporary custody shall not constitute an adjudication of the rights of the parties.

(f)(1) In any case in which a judgment awarding the custody of a child has been entered, the court entering such judgment shall retain jurisdiction of the case for the purpose of ordering the custodial parent to notify the court of any changes in the residence of the child.

(2) In any case in which visitation rights or parenting time has been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation or parenting time, the custodial parent shall notify the noncustodial parent, in writing, of any change in such address. Such written notification shall provide a street address or other description of the new location for pickup and delivery so that the noncustodial parent may exercise such parent's visitation rights or parenting time.

(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights or parenting time under this title or a court order. Such notification shall be given at least 30 days prior to the anticipated change of residence and shall include the full address of the new residence.

(g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee provisions contained in Code Section 19-6-15, the judge

may order reasonable attorney's fees and expenses of litigation, experts, and the child's guardian ad litem and other costs of the child custody action and pretrial proceedings to be paid by the parties in proportions and at times determined by the judge. Attorney's fees may be awarded at both the temporary hearing and the final hearing. A final judgment shall include the amount granted, whether the grant is in full or on account, which may be enforced by attachment for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile or not. An attorney may bring an action in his or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

(h) In addition to filing requirements contained in Code Section 19-6-15, upon the conclusion of any proceeding under this article, the domestic relations final disposition form as set forth in Code Section 9-11-133 shall be filed.

(i) Notwithstanding other provisions of this article, whenever a military parent is deployed, the following shall apply:

(1) A court shall not enter a final order modifying parental rights and responsibilities under an existing parenting plan earlier than 90 days after the deployment ends, unless such modification is agreed to by the deployed parent;

(2) Upon a petition to establish or modify an existing parenting plan being filed by a deploying parent or nondeploying parent, the court shall enter a temporary modification order for the parenting plan to ensure contact with the child during the period of deployment when:

(A) A military parent receives formal notice from military leadership that he or she will deploy in the near future, and such parent has primary physical custody, joint physical custody, or sole physical custody of a child, or otherwise has parenting time with a child under an existing parenting plan; and

(B) The deployment will have a material effect upon a deploying parent's ability to exercise parental rights and responsibilities toward his or her child either in the existing relationship with the other parent or under an existing parenting plan;

(3) Petitions for temporary modification of an existing parenting plan because of a deployment shall be heard by the court as expeditiously as possible and shall be a priority on the court's calendar;

(4)(A) All temporary modification orders for parenting plans shall include a reasonable and specific transition schedule to facilitate a return to the predeployment parenting plan over the shortest

reasonable time period after the deployment ends, based upon the child's best interest.

(B) Unless the court determines that it would not be in the child's best interest, a temporary modification order for a parenting plan shall set a date certain for the anticipated end of the deployment and the start of the transition period back to the predeployment parenting plan. If a deployment is extended, the temporary modification order for a parenting plan shall remain in effect, and the transition schedule shall take effect at the end of the extension of the deployment. Failure of the nondeploying parent to notify the court in accordance with this paragraph shall not prejudice the deploying parent's right to return to the predeployment parenting plan once the temporary modification order for a parenting plan expires as provided in subparagraph (C) of this paragraph.

(C) A temporary modification order for a parenting plan shall expire upon the completion of the transition period and the predeployment parenting plan shall establish the rights and responsibilities between parents for the child;

(5) Upon a petition to modify an existing parenting plan being filed by a deploying parent and upon a finding that it serves the best interest of the child, the court may delegate for the duration of the deployment any portion of such deploying parent's parenting time with the child to anyone in his or her extended family, including but not limited to an immediate family member, a person with whom the deploying parent cohabits, or another person having a close and substantial relationship to the child. Such delegated parenting time shall not create any separate rights to such person once the period of deployment has ended;

(6) If the court finds it to be in the child's best interest, a temporary modification order for a parenting plan issued under this subsection may require any of the following:

(A) The nondeploying parent make the child reasonably available to the deploying parent to exercise his or her parenting time immediately before and after the deploying parent departs for deployment and whenever the deploying parent returns to or from leave or furlough from his or her deployment;

(B) The nondeploying parent facilitate opportunities for the deployed parent to have regular and continuing contact with his or her child by telephone, e-mail exchanges, virtual video parenting time through the Internet, or any other similar means;

(C) The nondeploying parent not interfere with the delivery of correspondence or packages between the deployed parent and child of such parent; and

(D) The deploying parent provide timely information regarding his or her leave and departure schedule to the nondeploying parent;

(7) Because actual leave from a deployment and departure dates for a deployment are subject to change with little notice due to military necessity, such changes shall not be used by the nondeploying parent to prevent contact between the deployed parent and his or her child;

(8) A court order temporarily modifying an existing parenting plan or other order governing parent-child rights and responsibilities shall specify when a deployment is the basis for such order and it shall be entered by the court only as a temporary modification order or interlocutory order;

(9) A relocation by a nondeploying parent during a period of a deployed parent's absence and occurring during the period of a temporary modification order for a parenting plan shall not act to terminate the exclusive and continuing jurisdiction of the court for purposes of later determining custody or parenting time under this chapter;

(10) A court order temporarily modifying an existing parenting plan or other order shall require the nondeploying parent to provide the court and the deploying parent with not less than 30 days' advance written notice of any intended change of residence address, telephone numbers, or e-mail address;

(11) Upon a deployed parent's final return from deployment, either parent may file a petition to modify the temporary modification order for a parenting plan on the grounds that compliance with such order will result in immediate danger or substantial harm to the child, and may further request that the court issue an ex parte order. The deployed parent may file such a petition prior to his or her return. Such petition shall be accompanied by an affidavit in support of the requested order. Upon a finding of immediate danger or substantial harm to the child based on the facts set forth in the affidavit, the court may issue an ex parte order modifying the temporary parenting plan or other parent-child contact in order to prevent immediate danger or substantial harm to the child. If the court issues an ex parte order, the court shall set the matter for hearing within ten days from the issuance of the ex parte order;

(12) Nothing in this subsection shall preclude either party from filing a petition for permanent modification of an existing parenting plan under subsection (b) of this Code section; provided, however, that the court shall not conduct a final hearing on such petition until at least 90 days after the final return of the deploying parent. There

shall exist a presumption favoring the predeployment parenting plan or custody order as one that still serves the best interest of the child, and the party seeking to permanently modify such plan or order shall have the burden to prove that it no longer serves the best interest of the child;

(13) When the deployment of a military parent has a material effect upon his or her ability to appear in person at a scheduled hearing, then upon request by the deploying parent and provided reasonable advance notice is given to other interested parties, the court may allow a deployed parent to present testimony and other evidence by electronic means for any matter considered by the court under this subsection. For purposes of this paragraph, the term "electronic means" shall include, but not be limited to, communications by telephone, video teleconference, Internet connection, or electronically stored affidavits or documents sent from the deployment location or elsewhere;

(14)(A) When deployment of a military parent appears imminent and there is no existing parenting plan or other order setting forth the parent's rights and responsibilities, then upon a petition filed by either parent the court shall:

- (i) Expedite a hearing to establish a temporary parenting plan;
- (ii) Require that the deploying parent shall have continued access to the child, provided that such contact is in the child's best interest;
- (iii) Ensure the disclosure of financial information pertaining to both parties;
- (iv) Determine the child support responsibilities under Code Section 19-6-15 of both parents during the deployment; and
- (v) Determine the child's best interest and consider delegating to any third parties with close contacts to the child any reasonable parenting time during the deployment. In deciding such request the court shall consider the reasonable requests of the deployed parent.

(B) Any pleading filed to establish a parenting plan or child support order under this paragraph shall be identified at the time of filing by stating in the text of the pleading the specific facts related to the deployment and by referencing this paragraph and subsection of this Code section;

(15) When an impending deployment precludes court expedited adjudication before deployment, the court may agree to allow the

parties to arbitrate any issues as allowed under Code Section 19-9-1.1, or order the parties to mediation under any court established alternative dispute resolution program. For purposes of arbitration or mediation, each party shall be under a duty to provide to the other party information relevant to any parenting plan or support issues pertaining to the children or the parties;

(16) Each military parent shall be under a continuing duty to provide written notice to the nondeploying parent within 14 days of the military parent's receipt of oral or written orders requiring deployment or any other absences due to military service that will impact the military parent's ability to exercise his or her parenting time with a child. If deployment orders do not allow for 14 days' advance notice, then the military parent shall provide written notice to the other parent immediately upon receiving such notice; and

(17) A military parent shall ensure that any military family care plan that he or she has filed with his or her commander is consistent with any existing court orders for his or her child. In all instances any court order will be the first course of action for the care of a child during the absence of a military parent, and the military family care plan will be the alternative plan if the nondeploying parent either refuses to provide care for the child or acknowledges an inability to provide reasonable care for the child. A military parent shall not be considered in contempt of any court order or parenting plan when he or she in good faith implements his or her military family care plan based upon the refusal or claimed inability of a nondeploying parent to provide reasonable care for a child during a deployment. (Ga. L. 1913, p. 110, § 1; Code 1933, § 74-107; Ga. L. 1957, p. 412, § 2; Ga. L. 1962, p. 713, § 2; Ga. L. 1976, p. 1050, § 3; Ga. L. 1978, p. 258, § 3; Ga. L. 1982, p. 3, § 19; Ga. L. 1984, p. 22, § 19; Ga. L. 1986, p. 1000, § 2; Ga. L. 1990, p. 1423, § 1; Ga. L. 1991, p. 1389, § 1; Ga. L. 1993, p. 1983, § 1; Ga. L. 1995, p. 863, § 6; Ga. L. 1999, p. 329, § 4; Ga. L. 2000, p. 1292, § 2; Ga. L. 2004, p. 780, § 3; Ga. L. 2007, p. 554, § 5/HB 369; Ga. L. 2011, p. 274, § 3/SB 112.)

**The 2011 amendment**, effective May 11, 2011, added the last sentence in subsection (b) and added subsection (i).

**Editor's notes.** — Ga. L. 2011, p. 274, § 1, not codified by the General Assembly, provides that: "This Act shall be known

and may be cited as the 'Military Parents Rights Act.'"

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### AWARD OF CUSTODY

##### 1. IN GENERAL

2. CHILD'S BEST INTERESTS AND WELFARE  
 CHANGE OF CUSTODY  
 2. APPLICATION  
 VISITATION RIGHTS

### General Consideration

**Custody evaluation properly ordered in visitation dispute.** — It was not error for a trial court to order a custody evaluation in a visitation dispute because: (1) O.C.G.A. § 19-9-22(1) included visitation in the definition of “custody”; and (2) O.C.G.A. § 19-9-3(a)(7) authorized the court to order an evaluation. *Gottschalk v. Gottschalk*, 311 Ga. App. 304, 715 S.E.2d 715 (2011).

**Cited** in *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010); *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011); *Caldwell v. Meadows*, 312 Ga. App. 70, 717 S.E.2d 668 (2011).

### Award of Custody

#### 1. In General

##### Trial court did not abuse the court's discretion, etc.

As a trial court did not base the court's custody decision in the parties' divorce action solely on their postnuptial reconciliation agreement pursuant to O.C.G.A. § 19-9-5(b), but instead, the court found that the custody arrangement encompassed within the agreement was in the children's best interests pursuant to the factors under O.C.G.A. § 19-9-3(a)(3)(A-Q), there was no abuse of discretion in the custody award. *Spurlin v. Spurlin*, 289 Ga. 818, 716 S.E.2d 209 (2011).

### 2. Child's Best Interests and Welfare

#### Considerations relevant in determining best interests of child.

There was evidence to support the trial court's determination that a move to Utah would be disruptive to the child, including evidence that the child had lived in Georgia most of the child's life, had relatives in Georgia, and had been unhappy on trips to Utah; such disruption was a permitted factor in considering the child's best interests as required by O.C.G.A. § 19-9-3. *Curtice v. Harwell*, 313 Ga. App. 263, 721 S.E.2d 200 (2011).

### Change of Custody

#### 2. Application

##### Parent's surrender of custody is change in condition, etc.

Trial court did not err in granting a father's petition for a change of custody and awarding the father primary physical custody of his child because the mother voluntarily surrendered physical custody and control over the child to the maternal grandmother, resulting in a material change in condition; after the entry of a consent order modifying the father's visitation rights, the grandmother limited some of the father's visitation with the child, that the mother and grandmother exhibited an ongoing pattern of excluding the father from important medical decisions affecting the child, and that they failed to notify the father whenever the mother executed a power of attorney in *loco parentis* in favor of the grandmother. *Shotwell v. Filip*, 314 Ga. App. 93, 722 S.E.2d 906 (2012).

**Change of custody held in child's best interest.** — Trial court committed no error in finding that it would be in the child's best interest to live with the father rather than the maternal grandmother because the father presented evidence from a licensed psychologist who opined that the father was a fit and qualified parent to have primary physical custody of the child and would be able to meet the needs of the child in adjusting to a new home; the father had been gainfully employed without a lapse of employment until April 2010 and had been applying for jobs with potential employers, and there was some evidence that the father's wife maintained suitable employment and made adequate income for the family to provide for the child's necessary basic care. *Shotwell v. Filip*, 314 Ga. App. 93, 722 S.E.2d 906 (2012).

#### Evidence held insufficient to justify change.

Trial court did not err in denying a mother's petition for modification of cus-

tody because the court applied the correct legal standard when the court concluded that it was not in the children's best interest to modify custody absent a material change in circumstance affecting their well-being; the mother failed to demonstrate that the house where the children lived was inadequate for their needs, that the children's welfare was materially affected by the living arrangements, or that the father's late shifts at work materially affected the children's welfare, and the father had an extensive family network available to the father. *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010).

### Visitation Rights

#### Portion of custody award concerning visitation may be modified.

Plaintiff ex-husband was correct that the due process clause of the Fourteenth Amendment protected a parent's fundamental right to participate in the care, custody, and management of their children, but he failed to show that O.C.G.A. § 19-9-3 violated his substantive due process rights because neither the U.S. Supreme Court nor the U.S. Court of Appeals for the Eleventh Circuit had held that a

state had to impose a specific standard of proof for modification of visitation rights. *Gottschalk v. Gottschalk*, No. 10-11979, 2011 U.S. App. LEXIS 12222 (11th Cir. June 16, 2011) (Unpublished).

#### Change in visitation rights is not dependent upon changed conditions.

It was not error for a trial court to modify a father's visitation without finding a material change in circumstances because O.C.G.A. § 19-9-3(b) specifically allowed a modification in visitation without such a finding. *Gottschalk v. Gottschalk*, 311 Ga. App. 304, 715 S.E.2d 715 (2011).

#### Increased visitation did not amount to de facto change of custody.

— Increased visitation to a former wife did not amount to a de facto change of custody because the increased visitation did not exceed the time of custody allowed to the former husband; also, the provision allowing the wife to make decisions regarding the children's day-to-day care when the children were in the mother's custody did not amount to a de facto change in custody. *Blackmore v. Blackmore*, 311 Ga. App. 885, 717 S.E.2d 504 (2011).

## 19-9-5. Custody agreements; ratification; supplementation.

### JUDICIAL DECISIONS

**Consideration of postnuptial reconciliation agreement.** — As a trial court did not base the court's custody decision in the parties' divorce action solely on their postnuptial reconciliation agreement pursuant to O.C.G.A. § 19-9-5(b), but instead the court found that the custody arrangement

encompassed within the agreement was in the children's best interests pursuant to the factors under O.C.G.A. § 19-9-3(a)(3)(A)-(Q), there was no abuse of discretion in the custody award. *Spurlin v. Spurlin*, 289 Ga. 818, 716 S.E.2d 209 (2011).

## 19-9-6. Definitions.

As used in this article, the term:

- (1) "Armed forces" means the national guard and the reserve components of the armed forces, the United States army, navy, marine corps, coast guard, and air force.
- (2) "Deploy" or "deployment" means military service in compliance with the military orders received by a member of the armed forces to

report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, temporary duty, or other such military service for which a parent is required to report unaccompanied by family members. Deployment shall include the period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause. Such term shall include mobilization.

(3) "Deploying parent" or "deployed parent" means a military parent who has been formally notified by military leadership that he or she will deploy or mobilize or who is currently deployed or mobilized.

(4) "Joint custody" means joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. In making an order for joint custody, the judge may order joint legal custody without ordering joint physical custody.

(5) "Joint legal custody" means both parents have equal rights and responsibilities for major decisions concerning the child, including the child's education, health care, extracurricular activities, and religious training; provided, however, that the judge may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.

(6) "Joint physical custody" means that physical custody is shared by the parents in such a way as to assure the child of substantially equal time and contact with both parents.

(7) "Military family care plan" means a plan that is periodically reviewed by a military parent's commander that provides for care of a military parent's child whenever his or her military duties prevent such parent from providing care to his or her child and ensures that a military parent has made adequate and reasonable arrangements to provide for the needs and supervision of his or her child whenever a nondeploying parent is unable or unavailable to provide care in the military parent's absence.

(8) "Military parent" means a member of the armed forces who is a legal parent, adoptive parent, or guardian of a child under the age of 18, whose parental rights are established either by operation of law or the process of legitimization, and who has not had his or her parental rights terminated by a court of competent jurisdiction.

(9) "Mobilization" or "mobilize" means the call-up of the national guard and the reserve components of the armed forces to extended active duty service. Such term shall not include National Guard or Reserves component annual training, inactive duty days, drill weekends, or state active duty performed within the boundaries this state.

(10) "Nondeploying parent" means:

- (A) A parent who is not a member of the armed forces; or
- (B) A military parent who is currently not also a deploying parent.

(11) "Sole custody" means a person, including, but not limited to, a parent, has been awarded permanent custody of a child by a court order. Unless otherwise provided by court order, the person awarded sole custody of a child shall have the rights and responsibilities for major decisions concerning the child, including the child's education, health care, extracurricular activities, and religious training, and the noncustodial parent shall have the right to visitation or parenting time. A person who has not been awarded custody of a child by court order shall not be considered as the sole legal custodian while exercising visitation rights or parenting time.

(12) "State active duty" means the call-up by a governor for the performance of any military duty while serving within the boundaries of that state.

(13) "Temporary duty" means the assignment of a military parent to a geographic location outside of this state for a limited period of time to accomplish training or to assist in the performance of a military mission. (Code 1981, § 19-9-6, enacted by Ga. L. 1990, p. 1423, § 2; Ga. L. 2007, p. 554, § 5/HB 369; Ga. L. 2011, p. 274, § 4/SB 112.)

**The 2011 amendment**, effective May 11, 2011, added present paragraphs (1) through (3), (7) through (10), (12), and (13); and redesignated former paragraphs (1) through (4) as present paragraphs (4) through (6) and (11), respectively.

**Editor's notes.** — Ga. L. 2011, p. 274, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Military Parents Rights Act.'"

## JUDICIAL DECISIONS

**Joint physical custody proper.** — Trial court did not abuse the court's discretion in awarding joint physical custody of a child because the trial court's order found both the husband and the wife to be fit and proper, acknowledging that each parent had strengths and weaknesses; the trial court heard testimony concerning the husband's relationship with his child, the financial payments he made while the child and the wife were living with the wife's parents in another state, and the difficulty of visiting the infant when the child and the wife were living with the

wife's parents. Furthermore, the order was made with the best interests of the child in mind because there was evidence that the child had a good relationship with each parent and that each parent had adequate housing for the child and could provide what the child needed; the trial court expressly found it was in the child's best interests that the husband and wife share joint physical custody on alternating weeks, and the Social Service Coordinator assigned to the case recommended to the trial court that the husband and wife share evenly-divided joint physical

custody of the child. *Willis v. Willis*, 288 Ga. 577, 707 S.E.2d 344 (2010).

**Modification of joint custody agreement.** — In granting the mother's petition to change custody, the record contained ample evidence from which the trial court could determine that the father could not provide a stable home because he took the child from Georgia to Mary-

land in violation of the joint custody agreement without telling the mother, he suffered from bipolar personality disorder, and was hospitalized for suicidal ideation. The trial court made the court's custody determination based upon the best interest of the child. *Roberts v. Kinsey*, 308 Ga. App. 675, 708 S.E.2d 600 (2011).

## ARTICLE 2

### CHILD CUSTODY INTRASTATE JURISDICTION ACT

#### 19-9-20. Short title.

#### JUDICIAL DECISIONS

**Cited** in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

#### 19-9-22. Definitions.

#### JUDICIAL DECISIONS

##### Change in visitation is form of change in child custody.

It was not error for a trial court to order a custody evaluation in a visitation dispute because: (1) O.C.G.A. § 19-9-22(1) included visitation in the definition of

“custody”; and (2) O.C.G.A. § 19-9-3(a)(7) authorized the court to order an evaluation. *Gottschalk v. Gottschalk*, 311 Ga. App. 304, 715 S.E.2d 715 (2011).

**Cited** in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

#### 19-9-23. Actions to obtain change of legal custody; how and where brought; use of certain complaints prohibited.

#### JUDICIAL DECISIONS

##### Modification of custody rights in contempt proceeding not authorized.

When the father violated the joint custody agreement incorporated in the divorce decree by taking the child to Maryland and refusing to return the child to Georgia, the trial court entered an ex parte emergency order in the contempt action. Because the trial court issued a

final order modifying custody in a separate action as required by O.C.G.A. § 19-9-23, the final order rendered any issues regarding the validity of the temporary order moot. *Roberts v. Kinsey*, 308 Ga. App. 675, 708 S.E.2d 600 (2011).

**Cited** in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

**19-9-24. Actions by physical or legal custodian not permitted in certain instances.**

**JUDICIAL DECISIONS**

**Dismissal of claims following withholding of visitation.** — Having found at a hearing that a custodial parent had withheld visitation, a trial court did not err when, pursuant to O.C.G.A. § 19-9-24(b), the court dismissed the contempt, visitation, and custody portions of

the custodial parent's petition and, consequently, did not permit the custodial parent to present evidence on the merits of the custodial parent's dismissed claims. *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

**ARTICLE 3**

**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

**PART 1**

**GENERAL PROVISIONS**

**19-9-41. Definitions.**

**JUDICIAL DECISIONS**

**“Home state,”** for all purposes which former Chapter 9 was designed to govern, did not mean the residence or domicile of the parent having legal custody. Rather, “home state”, for purposes of former § 19-9-43, meant the place where the child lived or had recently lived and where the child would presumably still be living had the child not been surreptitiously removed therefrom. *Harper v. Landers*, 180 Ga. App. 154, 348 S.E.2d 698 (1986) (decided under former §§ 19-9-42 and 19-9-43).

Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the “home state” of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the

Georgia proceeding was commenced and at the time the trial court entered the court's initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

**Res judicata did not bar custody petition.** — Since a previous visitation order related to the grandparent's right to visitation, not custody, and the legal issues to be decided varied, the trial court properly determined that res judicata did not bar the grandparents' petition for custody under the Uniform Child Jurisdiction and Custody Act, O.C.G.A. § 19-9-40 et seq.; the Act does not provide that the judgment is conclusive as to all issues which could have been put in issue. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

**Cited** in Zinkhan v. Bruce, 305 Ga. App. 510, 699 S.E.2d 833 (2010); Oglesby v. Deal, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

## 19-9-44. Child custody determinations of foreign country.

### JUDICIAL DECISIONS

**Georgia trial court had jurisdiction.** — Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at

the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered the court's initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. Bellew v. Larese, 288 Ga. 495, 706 S.E.2d 78 (2011).

## 19-9-45. Binding authority of child custody determination.

### JUDICIAL DECISIONS

**Res judicata did not bar custody petition.** — Since a previous visitation order related to the grandparent's right to visitation, not custody, and the legal issues to be decided varied, the trial court properly determined that res judicata did not bar the grandparents' petition for cus-

tody under the Uniform Child Jurisdiction and Custody Act, O.C.G.A. § 19-9-40 et seq.; the Act does not provide that the judgment is conclusive as to all issues which could have been put in issue. Scott v. Scott, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

## PART 2

### JURISDICTION

## 19-9-61. Jurisdiction requirements for initial child custody determinations; physical presence alone insufficient.

### JUDICIAL DECISIONS

#### **Georgia was child's "home state."**

Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia

was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered the court's initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was in-

sufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

**Lack of subject matter jurisdiction.** — Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children's father without notice and a hearing and without consideration of the children's best interests; the children's physical presence in the state was insufficient to confer subject matter jurisdiction over the petition for custody, as the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., presumed that

a "court" acting under its auspices already had jurisdiction to act as authorized by law. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

Georgia trial court did not have subject matter jurisdiction to modify a Kansas custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-40 et seq., because, while Georgia was the child's home state under O.C.G.A. § 19-9-61, Georgia failed to satisfy the remaining requirements of O.C.G.A. § 19-9-63 since the Kansas court never made a determination that it no longer had continuing, exclusive jurisdiction over the custody issue or that Georgia provided a more convenient forum than Kansas. And, although the Georgia court determined that neither the child nor the parents were presently residing in Kansas, the court erred in doing so. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012).

**Cited** in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

## RESEARCH REFERENCES

**ALR.** — Construction and application of Uniform Child Custody Jurisdiction and Enforcement Act's significant connec-

tion jurisdiction provision, 52 ALR6th 433.

## 19-9-62. Prerequisites for termination of exclusive, continuing jurisdiction.

### JUDICIAL DECISIONS

**Cited** in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

## RESEARCH REFERENCES

**ALR.** — Construction and application of Uniform Child Custody Jurisdiction and Enforcement Act's significant connec-

tion jurisdiction provision, 52 ALR6th 433.

### 19-9-63. Prerequisites for modifying custody determination from foreign court.

#### JUDICIAL DECISIONS

**Other state no longer has exclusive, continuing jurisdiction.** — In a Georgia action to modify an Alaska child custody determination, the Georgia trial court properly assumed jurisdiction pursuant to O.C.G.A. § 19-9-63, because during a telephone conversation between the Georgia and the Alaska courts, the Alaska court determined that it no longer had exclusive continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., that Georgia was the home state of the children, and that the Georgia court was the more appropriate forum. *Lopez v. Olson*, 314 Ga. App. 533, No. A11A1794, 2012 Ga. App. LEXIS 228 (2012).

**Lack of subject matter jurisdiction.** — Georgia trial court did not have subject

matter jurisdiction to modify a Kansas custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-40 et seq., because, while Georgia was the child's home state under O.C.G.A. § 19-9-61, Georgia failed to satisfy the remaining requirements of O.C.G.A. § 19-9-63 since the Kansas court never made a determination that it no longer had continuing, exclusive jurisdiction over the custody issue or that Georgia provided a more convenient forum than Kansas. Furthermore, although the Georgia court determined that neither the child nor the parents were presently residing in Kansas, the court erred in doing so. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012).

#### RESEARCH REFERENCES

**ALR.** — Construction and application of Uniform Child Custody Jurisdiction and Enforcement Act's significant connec-

tion jurisdiction provision, 52 ALR6th 433.

### 19-9-64. Temporary emergency jurisdiction; continuing effect; communicating with other courts.

#### JUDICIAL DECISIONS

**Cited** in *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012).

#### RESEARCH REFERENCES

**ALR.** — Construction and application of uniform child custody jurisdiction and

enforcement act's temporary emergency jurisdiction provision, 53 ALR6th 419.

### 19-9-66. Procedure where proceedings pending in another state.

#### JUDICIAL DECISIONS

**Jurisdiction properly exercised by Georgia court.**

Trial court erred in dismissing a hus-

band's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had

jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered the

court's initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

### **19-9-67. Finding of inconvenient forum; conditions.**

#### **JUDICIAL DECISIONS**

**Georgia trial court had jurisdiction.** — Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at

the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered its initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

### **19-9-68. Wrongfully obtained jurisdiction; actions to prevent repetition of unjustifiable conduct; expenses.**

#### **JUDICIAL DECISIONS**

**No unjustifiable conduct.** — Mother was not entitled to attorney fees pursuant to O.C.G.A. § 19-9-68 since the father never alleged or presented evidence that the mother no longer resided in Kansas, but the Georgia trial court's holding to

that effect was due to the court's own error, and was not based on any alleged unjustifiable conduct by the father. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012).

## PART 3

## JURISDICTION AND ENFORCEMENT OF FOREIGN DECREES

**19-9-85. Registering foreign custody determinations; requirements of registering court; contesting registration; confirmation of registered order.**

## JUDICIAL DECISIONS

**Registration not a prerequisite to modification.** — In a Georgia action to modify an Alaska child custody determination, although the Alaska judgment was not registered, the plain language of O.C.G.A. §§ 19-9-85 and 19-9-86 did not

require that the Alaska custody determination be registered before it was modifiable. Lopez v. Olson, 314 Ga. App. 533, No. A11A1794, 2012 Ga. App. LEXIS 228 (2012).

**19-9-86. Granting relief and enforcing registered custody determinations.**

## JUDICIAL DECISIONS

**Registration not a prerequisite to modification.** — In a Georgia action to modify an Alaska child custody determination, although the Alaska judgment was not registered, the plain language of O.C.G.A. §§ 19-9-85 and 19-9-86 did not

require that the Alaska custody determination be registered before it was modifiable. Lopez v. Olson, 314 Ga. App. 533, No. A11A1794, 2012 Ga. App. LEXIS 228 (2012).

**19-9-92. Awarding of necessary and reasonable expenses.**

## JUDICIAL DECISIONS

**Only applicable to prevailing party in enforcement proceeding.** — Costs and attorney fees are allowable under O.C.G.A. § 19-9-92 only to the prevailing

party in an enforcement proceeding, not to a party prevailing on the issue of jurisdiction. Delgado v. Combs, 314 Ga. App. 419, 724 S.E.2d 436 (2012).

## CHAPTER 10

### ABANDONMENT OF SPOUSE OR CHILD

**19-10-1. Abandonment of dependent child; criminal penalties; continuing offense; venue; blood tests or other comparisons as evidence; payment of expenses of birth of child born out of wedlock; agreement for support of child born out of wedlock.**

#### JUDICIAL DECISIONS

##### ANALYSIS

###### GENERAL CONSIDERATION

###### General Consideration

**No tort remedy against father's parents for violation of abandonment statute.** — Legislature allowed for contempt, garnishment, and income withholding to enforce child support obligations and did not intend to create

additional implied remedies under O.C.G.A. § 51-1-6 for violation of O.C.G.A. § 19-10-1, the child abandonment statute. Therefore, a wife was not entitled to recover damages from her ex-husband's parents for her husband's violation of § 19-10-1. *Bridges v. Wooten*, 305 Ga. App. 682, 700 S.E.2d 678 (2010).

## CHAPTER 11

### ENFORCEMENT OF DUTY OF SUPPORT

#### ARTICLE 1

##### CHILD SUPPORT RECOVERY ACT

**19-11-1. Short title.**

#### JUDICIAL DECISIONS

**Public assistance is nondistinguishing factor.** — Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq., does not contain any basis for continuing to distinguish between the procedure available when a child is receiving public assistance and that which is available in the absence of any such assistance. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

**Procedure available the same when**

**child not receiving public assistance.** — In a child support modification action, the trial court erred in concluding that evidence of the need for additional support was necessary and that the Department of Human Resources (DHR) lacked standing to file a modification action on behalf of a child not receiving public assistance unless it could show the child's need for additional support; by express statutory amendment, the General As-

sembly no longer reserved for the private bar those modification actions which involved children who did not receive public assistance and needed no additional sup-

port, but whose court-ordered provider enjoyed an enhanced financial status. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

### **19-11-9. Location of absent parents by department; assistance of other governmental agencies; putative father registry; use of information obtained.**

#### **RESEARCH REFERENCES**

**ALR.** — Requirements and effects of putative father registries, 28 ALR6th 349.

### **19-11-12. Review of orders for child support; review procedures; order adjusting support award amount; no release from liability due to subsequent financial obligation.**

**Law reviews.** — For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010). For an-

nual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

#### **JUDICIAL DECISIONS**

##### **Need for additional support not required.**

In a child support modification action, the trial court erred in concluding that evidence of the need for additional support was necessary and that the Department of Human Resources (DHR) lacked standing to file a modification action on behalf of a child not receiving public assistance unless it could show the child's need for additional support, and in failing to apply the child

support guidelines of O.C.G.A. § 19-6-15 and to justify any departure therefrom; by express statutory amendment, the General Assembly no longer reserved for the private bar those modification actions which involved children who did not receive public assistance and needed no additional support, but whose court-ordered provider enjoyed an enhanced financial status. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

### **ARTICLE 3**

### **UNIFORM INTERSTATE FAMILY SUPPORT ACT**

#### **PART 1**

#### **GENERAL PROVISIONS**

### **19-11-101. Definitions.**

#### **JUDICIAL DECISIONS**

**Cited** in *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

**19-11-102. Designated tribunals.****JUDICIAL DECISIONS**

**Cited** in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

**19-11-103. Nature of remedies.****JUDICIAL DECISIONS**

**Cited** in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

**PART 2****JURISDICTION; COOPERATION BETWEEN STATES****19-11-110. Jurisdiction.****JUDICIAL DECISIONS**

**Cited** in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

**RESEARCH REFERENCES**

**ALR.** — Requirements and effects of putative father registries, 28 ALR6th 349.

**19-11-111. Cooperation with other jurisdictions; limitations.****JUDICIAL DECISIONS**

**Cited** in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

**19-11-112. Authority of tribunal.****JUDICIAL DECISIONS**

**Cited** in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

**19-11-114. Continuing, exclusive jurisdiction; loss of continuing, exclusive jurisdiction.****JUDICIAL DECISIONS**

**Jurisdiction over child support arrearages.** — Georgia Uniform Interstate Family Support Act, O.C.G.A. § 19-11-101 et seq., did not deprive a trial court of jurisdiction over the issue of child support arrearages based upon a prior-filed United Kingdom enforcement proceeding. Continuing, exclusive jurisdiction over the child support provisions of

the decree existed in the trial court because the trial court issued the decree, the mother and the child resided in Georgia, and no evidence existed that the parents had filed written consents to allow the tribunal of another state to assume continuing, exclusive jurisdiction. *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

**PART 3****CIVIL PROVISIONS****19-11-123. Information to be provided to responding tribunal.****JUDICIAL DECISIONS**

**Cited** in *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

**19-11-135. Petitioner's physical presence not required; evidence admissible; testimony of spouses.****JUDICIAL DECISIONS**

**Testimony by telephone.** — Pursuant to O.C.G.A. § 19-11-135(f) and given that two closely interrelated contempt proceedings between a former husband and a former wife were consolidated for hearing, the trial court did not abuse the court's

discretion in permitting one of the former spouses to testify by telephone or by not dismissing the spouse's contempt motion for want of prosecution. *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

---

**CHAPTER 13****FAMILY VIOLENCE****Article 3****State Commission on Family Violence**

Sec.

19-13-32. Membership; terms; filling of vacancies; officers.

## ARTICLE 1

## GRANTING OF RELIEF BY SUPERIOR COURTS

**19-13-3. Filing of petition seeking relief from family violence; granting of temporary relief ex parte; hearing; dismissal of petition upon failure to hold hearing; procedural advice for victims.**

**Law reviews.** — For comment, “Engendering Fairness in Domestic Violence Arrests: Improving Police Accountability

Through the Equal Protection Clause,” see 60 Emory L.J. 1011 (2011).

## JUDICIAL DECISIONS

**Burden of proof.**

Trial court abused the court’s discretion by issuing a protective order against a lessee because a lessor did not meet the burden under O.C.G.A. §§ 16-5-94(e) and 19-13-3(c) of showing that the lessee committed the offense of stalking. O.C.G.A. § 16-5-90(a)(1); other than the lessor’s own testimony, the lessor offered no proof that the lessee and a former business associate were acting in concert against the lessor or that their alleged joint activities were of the type that would support a protective order based on the offense of stalking. *Martin v. Woodyard*, 313 Ga. App. 797, 723 S.E.2d 293 (2012).

**Protective order under O.C.G.A. § 16-5-94.**

Imposition of a stalking protective order against the former boyfriend was inappropriate under O.C.G.A. §§ 16-5-90(a)(1), 16-5-94(e), and 19-13-3(c) because the evidence admitted at the hearing was clearly insufficient to establish the necessary “pattern” of harassing and intimidating behavior against the former girlfriend. Even assuming that an incident in the parking lot constituted the requisite contact of an intimidating or harassing nature, the only other evidence presented was that the parties would sometimes be in the same place at the school, which was a place that both had the right to be. *Ramsey v. Middleton*, 310 Ga. App. 300, 713 S.E.2d 428 (2011).

**19-13-4. Protective orders and consent agreements; contents; issuing copy of order to sheriff; expiration; enforcement.**

**Law reviews.** — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

## JUDICIAL DECISIONS

**Transmission of order to Protective Order Registry mandatory.** — Although a one-year protective order against a husband had expired at the time of his appeal, rendering certain evidentiary issues moot, other issues

which tended to evade review were considered. The trial court did not err in transmitting the protective order to the Georgia Protective Order Registry as required by O.C.G.A. § 19-13-4. *Birchby v. Carboy*, 311 Ga. App. 538, 716 S.E.2d 592 (2011).

**ARTICLE 3****STATE COMMISSION ON FAMILY VIOLENCE****19-13-32. Membership; terms; filling of vacancies; officers.**

(a) The State Commission on Family Violence shall consist of 37 members:

(1) Three ex officio members shall be the director of the Division of Family and Children Services of the Department of Human Services, the director of Women's Health Services in the Department of Public Health, and the Attorney General;

(2) Three members shall be members of the House of Representatives and shall be appointed by the Speaker of the House;

(3) Three members shall be members of the Senate and shall be appointed by the President of the Senate;

(4) The remaining members shall be appointed by the Governor as follows:

(A) One judge from each judicial administrative district;

(B) Three advocates for battered women recommended by groups which have addressed the problem of family violence;

(C) One person with expertise and interest regarding family violence involving persons who are 60 years of age or older;

(D) One person with expertise and interest regarding family violence involving children; and

(E) One representative from each of the following:

(i) The Administrative Office of the Courts;

(ii) The Georgia Peace Officer Standards and Training Council;

(iii) The Georgia Association of Chiefs of Police;

(iv) The District Attorneys Association of Georgia;

(v) The State Board of Pardons and Paroles;

(vi) The probation system;

(vii) The Georgia Sheriffs' Association;

(viii) The Criminal Justice Coordinating Council;

(ix) The Solicitors Association of Georgia;

(x) The legal aid community;

- (xi) The academic community;
- (xii) Men Stopping Violence; and
- (xiii) A former victim of domestic violence.

(b) The Governor, Speaker of the House, and President of the Senate shall appoint individuals who are specially qualified to serve on the commission by reason of their experience and knowledge of family violence issues.

(c) Members serving on July 1, 1996, or persons appointed to complete the unexpired terms of members serving on July 1, 1996, shall complete the terms for which they were appointed. The term of appointment shall be three years for initial successors to members appointed in accordance with the following provisions of subsection (a) of this Code section: paragraph (2) and divisions (ii), (iv), (vi), (viii), (x), and (xii) of subparagraph (E) of paragraph (4). The term of appointment shall be three years for the initial members appointed in accordance with subparagraphs (a)(4)(C) and (a)(4)(D) of this Code section. Initial successors to judicial members appointed to represent even-numbered judicial administrative districts shall be appointed for terms of three years. Two of the initial successors for members appointed in accordance with subparagraph (a)(4)(B) this Code section shall be appointed for terms of three years. The term of appointment shall be two years for initial successors to all other members except those serving *ex officio*. The letter of appointment shall set out the term for which each member is appointed. Thereafter, each member shall be appointed for a term of two years, and no member may serve more than two consecutive terms. Each member shall serve until the date his or her successor is appointed. All vacancies shall be filled for the unexpired term by an appointee of the original appointing official.

(d) The commission shall elect a chairperson, vice chairperson, and a secretary from among its members for terms of two years, and any member shall be eligible for successive election to such office by the commission. (Code 1981, § 19-13-32, enacted by Ga. L. 1992, p. 1810, § 1; Ga. L. 1995, p. 1186, § 2; Ga. L. 1996, p. 449, § 2; Ga. L. 2009, p. 453, § 1-17/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214; Ga. L. 2012, p. 200, § 1/HB 733.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health” in paragraph (a)(1).

**The 2012 amendment**, effective April

16, 2012, added the next-to-last sentence of subsection (c).

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

## ARTICLE 4

FAMILY VIOLENCE AND STALKING PROTECTIVE ORDER  
REGISTRY**19-13-53. Standardized forms; timing of transmission of information and data entry; responsibility of sheriff's office.****JUDICIAL DECISIONS**

**Transmission of order to Protective Order Registry mandatory.** — Although a one-year protective order against a husband had expired at the time of his appeal, rendering certain evidentiary issues moot, other issues

which tended to evade review were considered. The trial court did not err in transmitting the protective order to the Georgia Protective Order Registry as required by O.C.G.A. § 19-13-4. *Birchby v. Carboy*, 311 Ga. App. 538, 716 S.E.2d 592 (2011).

---

**CHAPTER 15****CHILD ABUSE**

Sec.

19-15-1. Definitions.

19-15-4. Georgia Child Fatality Review  
Panel.**19-15-1. Definitions.**

As used in this chapter, the term:

- (1) “Abused” means subjected to child abuse.
- (2) “Child” means any person under 18 years of age.
- (3) “Child abuse” means:
  - (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;
  - (B) Neglect or exploitation of a child by a parent or caretaker thereof;
  - (C) Sexual abuse of a child; or
  - (D) Sexual exploitation of a child.
- (4) “Child protection professional” means any person who is employed by the state or a political subdivision of the state as a law

enforcement officer, school teacher, school administrator, or school counselor or who is employed to render services to children by the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services or any county board of health, community service board, or county department of family and children services.

(5) "Eligible deaths" means deaths meeting the criteria for review by a county child fatality review committee including deaths resulting from Sudden Infant Death Syndrome, unintentional injuries, intentional injuries, medical conditions when unexpected or when unattended by a physician, or any manner that is suspicious or unusual.

(6) "Investigation" in the context of child death includes all of the following:

(A) A post-mortem examination which may be limited to an external examination or may include an autopsy;

(B) An inquiry by law enforcement agencies having jurisdiction into the circumstances of the death, including a scene investigation and interview with the child's parents, guardian, or caretaker and the person who reported the child's death;

(C) A review of information regarding the child and family from relevant agencies, professionals, and providers of medical care.

(7) "Panel" means the Georgia Child Fatality Review Panel established pursuant to Code Section 19-15-4. The panel oversees the local child fatality review process and reports to the Governor on the incidence of child deaths with recommendations for prevention.

(8) "Protocol committee" means a multidisciplinary, multiagency child abuse protocol committee established for a county pursuant to Code Section 19-15-2. The protocol committee is charged with developing local protocols to investigate and prosecute alleged cases of child abuse.

(9) "Report" means a standardized form designated by the panel which is required for collecting data on child fatalities reviewed by local child fatality review committees.

(10) "Review committee" means a multidisciplinary, multiagency child fatality review committee established for a county or circuit pursuant to Code Section 19-15-3. The review committee is charged with reviewing all eligible child deaths to determine manner and cause of death and if the death was preventable.

(11) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any person;
- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than three years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(12) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

- (A) Prostitution, as defined in Code Section 16-6-9; or
- (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100. (Code 1981, § 19-1-1, enacted by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-1, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L. 2001, p. 1158, § 1; Ga. L. 2009, p. 453, § 2-8/HB 228; Ga. L. 2009, p. 733, § 2/SB 69; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in paragraph (4).

#### **19-15-4. Georgia Child Fatality Review Panel.**

(a) There is created the Georgia Child Fatality Review Panel as defined in paragraph (7) of Code Section 19-15-1.

(b) The Office of the Child Advocate for the Protection of Children shall coordinate the work of the panel and shall provide such administrative and staff support to the panel as may be necessary to enable the panel to discharge its duties under this chapter. The panel shall be attached to the Office of Planning and Budget for administrative purposes, and its planning, policy, and budget functions shall be coordinated with those of the Office of the Child Advocate.

(c) The panel shall be composed as follows:

- (1) One district attorney appointed by the Governor;
- (2) One juvenile court judge appointed by the Governor;
- (3) Two citizen members who shall be appointed by the Governor, who are not employed by or officers of the state or any political subdivision thereof and one of whom shall come from each of the following: (A) a state-wide child abuse prevention organization; and (B) a state-wide childhood injury prevention organization;
- (4) One forensic pathologist appointed by the Governor;
- (5) The chairperson of the Board of Human Services;
- (6) The director of the Division of Family and Children Services of the Department of Human Services;
- (7) The director of the Georgia Bureau of Investigation;
- (8) The chairperson of the Criminal Justice Coordinating Council;
- (9) A member of the Georgia Senate appointed by the Lieutenant Governor;
- (10) A member of the Georgia House of Representatives appointed by the Speaker of the House of Representatives;
- (11) A local law enforcement official appointed by the Governor;
- (12) A superior court judge appointed by the Governor;
- (13) A coroner appointed by the Governor;
- (14) The Child Advocate for the Protection of Children;
- (15) The commissioner of public health; and
- (16) The commissioner of behavioral health and developmental disabilities.

(d) The Governor shall appoint the chairperson of the panel.

(e)(1) All appointed members shall be appointed for terms of two years beginning on July 1 of the year appointed and shall serve until their respective successors are appointed and qualified.

(2) All ex officio members shall serve during the time such persons hold the offices or positions specified therein.

(3) Members of the General Assembly shall serve for terms of office concurrent with their terms of office as members of the General Assembly.

(4) Vacancies in the membership of the panel so appointed shall be filled in the same manner as the original appointment for the unexpired term of office.

(f) Members of the panel who are members of the General Assembly shall be compensated for service on the panel from legislative funds in the manner provided for service on interim study committees. Those members of the panel who are not state officials or employees shall receive from funds appropriated or otherwise available to the panel for their services on the panel the same daily expense and travel or mileage allowance authorized for members of the General Assembly for service on interim study committees. The members of the panel who are state officials or employees shall receive no additional compensation for their service on the panel but may be reimbursed for reasonable and necessary travel expenses which shall be payable from the department or agency of which such member is an employee or officer.

(g) The panel shall meet quarterly to review the reports of local review committees and shall meet when requested to do so by the Governor.

(h) The purpose of the panel is to recommend measures to decrease the incidence of child death by undertaking all of the following duties:

(1) Identify factors which place a child at risk for death;

(2) Collect and share information among state agencies which provide services to children and families or investigate child deaths;

(3) Make suggestions and recommendations to appropriate participating agencies regarding improving coordination of services and investigations;

(4) Identify trends relevant to unexpected or unexplained child death;

(5) Investigate the relationship, if any, between child deaths and violence between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household;

(6) Review each report from local child fatality review committees. The chairperson may call a special meeting of the panel to review any

report when the chairperson has concluded the report warrants expedited review and has been requested by the submitting local review committee to make such expedited review;

(7) Provide training and written materials to the local review committees to assist them in carrying out their duties. Such written materials shall include model protocols for the operation of the review committees;

(8) Develop a protocol for child fatality investigations and revise the protocol as needed;

(9) Monitor the operations of local review committees to determine training needs and service gaps. If the panel determines that changes to any statute, regulation, or policy is needed to decrease the risk of child death, it shall propose and recommend such changes in its annual report; and

(10) Develop and implement such procedures and policies as are necessary for its own operation.

(i) By January 1 of each calendar year, the panel shall submit a report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the Judiciary Committees of the Senate and House of Representatives regarding the prevalence and circumstances of child fatalities in the state; recommend measures to reduce such fatalities caused by other than natural causes; and address in the report the following issues:

(1) Whether the deaths could have been prevented;

(2) Whether the children were known to any state or local agency;

(3) The actions, if any, taken by any state or local agency or court;

(4) Whether agency or court intervention could have prevented their deaths;

(5) Whether policy, procedural, regulatory, or statutory changes are called for as a result of these findings; and

(6) Whether any referral should have been made to a law enforcement agency which was not made.

(j) The panel shall also establish procedures for the conduct of reviews by local review committees into deaths of children and may obtain the assistance of child protection professionals in establishing such procedures.

(k) The panel shall have the authority to obtain from any superior court judge of the county or circuit for which the matter is pending a subpoena to compel the production of documents or attendance of

witnesses if the county multiagency child fatality review committee has not exercised its authority to subpoena the documents or witnesses as provided in paragraph (3) of subsection (k) of Code Section 19-15-3; provided, however, if a superior court judge has previously ruled that the records or witnesses are not necessary to the fatality review at issue, such finding shall be conclusive on the issuance of the subpoena. (Code 1981, § 19-1-4, enacted by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-4, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L. 1996, p. 803, § 1; Ga. L. 1998, p. 609, § 3; Ga. L. 1999, p. 81, § 19; Ga. L. 2000, p. 243, § 2; Ga. L. 2001, p. 1158, § 1; Ga. L. 2003, p. 395, § 2; Ga. L. 2008, p. 166, § 2/HB 1051; Ga. L. 2008, p. 568, § 8/HB 1054; Ga. L. 2009, p. 453, § 1-19/HB 228; Ga. L. 2011, p. 705, § 5-4/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “The commissioner of public health” for “The director of the

Division of Public Health of the Department of Community Health” in paragraph (c)(15).













